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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 DANIEL NORCIA, on his own behalf and on
13 behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 SAMSUNG TELECOMMUNICATIONS
17 AMERICA, LLC, a New York Corporation, and
18 SAMSUNG ELECTRONICS AMERICA, INC.,
19 a New Jersey Corporation,

20 Defendants.

Case No.: 3:14-cv-582-JD

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE §1750, et seq.**
2. **UNLAWFUL AND UNFAIR BUSINESS PRACTICES, CALIFORNIA BUS. & PROF. CODE §17200, et seq.**
3. **FALSE ADVERTISING, CALIFORNIA BUS. & PROF. CODE §17500, et seq.**
4. **FRAUD**

JURY TRIAL DEMANDED

1 Plaintiff DANIEL NORCIA, having not previously amended as a matter of course pursuant to
2 Fed.R.Civ.P. 15(a)(1)(B), hereby exercises that right by amending within 21 days of service of
3 Defendants' Motion to Dismiss filed October 20, 2014 (ECF 45).

4 Individually and on behalf of all others similarly situated, Daniel Norcia complains and alleges,
5 by and through his attorneys, upon personal knowledge and information and belief, as follows:

6 **NATURE OF THE ACTION**

- 7 1. Defendants Samsung Telecommunications America, LLC ("Samsung Telecommunications"),
8 and Samsung Electronics America ("Samsung Electronics," collectively with Samsung
9 Telecommunications, "Defendants" or "Samsung") have intentionally misled the public in order
10 to boost sales of the flagship Galaxy S4 smartphones.
- 11 2. Specifically, Samsung has programmed these devices to run at higher-than-normal speeds when
12 they detect certain "benchmarking" apps. Benchmarking apps are performance-measuring tools
13 used by reviewers and consumers to test and compare the speed and performance of smartphones
14 and tablets. Samsung intentionally programmed the Galaxy S4 to fool benchmark apps and to
15 create a false perceptions regarding the speed and performance of these devices. Samsung knew
16 that publications and review sites regularly use benchmarking apps to review and evaluate new
17 devices and to compare competing devices.
- 18 3. Samsung also knew that if it artificially boosted the performance of its devices when running
19 benchmarking apps, reviewers and the public would falsely believe that the Galaxy S4 was
20 similarly fast in real-world situations. In reality, the processors in the Galaxy S4 run at a lower
21 speed and the artificial performance boost disappears when the devices are performing real-
22 world tasks instead of running benchmarking apps.
- 23 4. Samsung intentionally cheated on benchmarking apps to create a false perception regarding the
24 speed and performance of the Galaxy S4, to thereby increase the demand for its new devices, and
25 to support a high price-point for these devices—all to the detriment of the buying public.
- 26 5. In addition, Samsung has misled the buying public regarding the storage capacity of the Galaxy
27 S4. Samsung advertised and marketed the Galaxy S4 as having 16 gigabytes (GB) of storage
28 capacity. However, the preinstalled software on the Galaxy S4 uses approximately half of the 16

1 GB memory, rendering it inaccessible and unusable to the end user.

- 2 6. Plaintiffs therefore seek restitution from Samsung for violation of the False Advertising Law and
3 the Unfair Competition Law, damages for fraudulent misrepresentation, and injunctive relief
4 pursuant to the Consumers Legal Remedies Act.

5 **PLAINTIFFS**

- 6 7. Plaintiff Daniel Norcia (“Plaintiff” or “Norcia”) is an individual residing in the state of
7 California and the County of San Francisco.

8 **DEFENDANTS**

- 9 8. Defendant Samsung Telecommunications America, LLC, is a limited liability corporation
10 organized under the laws of the State of New York. Its principal place of business is in
11 Richardson, Texas. Samsung Telecommunications distributed and/or sold consumer electronic
12 devices, including the Galaxy S4 smartphone, in this judicial District and throughout California.

- 13 9. Defendant Samsung Electronics America, Inc., is a corporation organized under the laws of the
14 State of New Jersey. Its principal place of business is in Ridgefield Park, New Jersey. Samsung
15 Electronics distributed and/or sold consumer electronic devices, including the Galaxy S4
16 smartphone, in this judicial District and throughout California.

17 **JURISDICTION AND VENUE**

- 18 10. This Court has personal and subject matter jurisdiction over all causes of action asserted herein.

- 19 11. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2). In the
20 aggregate, the claims of Plaintiffs and other members of the putative Classes exceed \$5,000,000
21 exclusive of interest and costs, and members of the Classes are citizens of States different from
22 the States of Defendant’s citizenship.

- 23 12. This Court has personal jurisdiction over Defendants because Defendants are registered and
24 authorized to conduct business in the State of California, and Defendants conduct business in the
25 State of California by distributing and/or selling consumer electronic devices, including the
26 Galaxy S4, in this District and throughout California.

- 27 13. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1) and (d) as Defendants are
28 residents of this District. Defendants are registered to do business in the State of California and

1 have subjected themselves to personal jurisdiction and venue by transacting business in this
2 District.

- 3 14. Venue is also proper in this District pursuant to 28 U.S.C. §1391(b)(2) as a substantial part of the
4 events or omissions giving rise to the claim occurred in this District. Plaintiff resides in this
5 district and purchased his Galaxy S4 phone in this district.

6 **GENERAL ALLEGATIONS**

7 **Samsung Mobile Devices**

- 8 15. Samsung Telecommunications and Samsung Electronics are part of the multinational Samsung
9 Group conglomerate, which is headquartered in Seoul, South Korea. The Samsung Group has
10 subsidiaries across widely varied industries, including shipbuilding, construction, insurance and
11 aerospace as well as consumer electronics. Global revenue for the Samsung Group in 2012 was
12 approximately \$268.8 billion. Samsung Electronics Co. Ltd., the parent of Defendant Samsung
13 Electronics, is currently the largest manufacturer (by revenue) of mobile phones in the world.
14 16. Samsung announced the release of the Galaxy S4 smart phone in mid-March 2013 as an
15 improvement on the Galaxy S III phone. The phone operates on the Google Android operating
16 system. The S4 first became available for purchase in late April 2013, with a retail price of
17 approximately \$649.00 on its own, or approximately \$249.00 when sold by wireless service
18 providers in conjunction with a two-year wireless service contract.

19 **Benchmark Manipulation**

- 20 17. The market for smart phones and tablets is currently dominated by devices running on the
21 Android operating system (“OS”) developed by Google, and Samsung is one of several
22 manufacturers that make and market devices running on the Android OS.
23 18. The OS of a smart phone or tablet largely dictates the experience for the user of the device.
24 Consequently, because the Android OS is used by multiple device manufacturers (unlike Apple’s
25 proprietary iOS, for example), Samsung cannot simply rely on the OS as a point of
26 differentiation to drive sales. Instead, in order to gain and keep market share and revenue,
27 Samsung must differentiate its Android OS devices from all the other Android OS devices in the
28 marketplace. In 2013, Samsung attempted to do this through a scheme designed to mislead

1 reviewers and the public about the speed and performance of its Android OS devices.

- 2 19. “Benchmark” apps are programs or applications for smart phones and tablets that run a set of
3 standardized tests and trials in order to assess device performance. By design, running the same
4 benchmark app on different devices allows one to assess the relative performance of the different
5 devices—the device that completes the tests and trials more quickly receives a higher score from
6 the benchmarking app than the slower device. Popular benchmark apps for Android OS mobile
7 devices include Geekbench, Quadrant, Antutu, Linpack, and GFXBench. When new mobile
8 devices are released, reviewers commonly use benchmark apps to compare the devices both to
9 their predecessors and to the competition.
- 10 20. Knowing this, Samsung intentionally rigged the S4 to operate at a higher speed when it detected
11 certain benchmarking apps. In versions of the S4 using the Qualcomm Snapdragon 600
12 processor, Samsung wrote code into the firmware (embedded software) of the S4 to
13 automatically and immediately drive Central Processing Unit (“CPU”) voltage/frequency to their
14 highest state, and to immediately engage all four of the processing cores of the CPU.
- 15 21. In versions of the S4 using the Samsung Exynos 5410 processor, the firmware also artificially
16 boosts the performance of the Graphics Processing Unit (“GPU”). When benchmarking apps are
17 detected, the GPU runs at a clock speed of 533MHz, while the speed of the GPU is limited to
18 480 MHz when running other apps.
- 19 22. By artificially manipulating the performance of the Galaxy S4 on benchmark tests, Samsung has
20 falsely represented the performance of its phones relative to those of its competitors. Samsung
21 has taken these actions knowing that the benchmarking manipulations would result in false
22 information being communicated to consumers, and that this false information would influence
23 their buying decisions.
- 24 23. Samsung intentionally misled the public by boosting the performance of the Galaxy S4.
25 Samsung knew that publications and review sites regularly use benchmarking apps to review and
26 evaluate new devices and to compare competing devices.
- 27 24. Samsung also knew that if it artificially boosted the performance of its devices when running
28 benchmarking apps, reviewers and the public would falsely believe that the Galaxy S4 were

1 comparatively faster than competing devices in real-world situations. In reality, the processors
2 run at a lower speed and the artificial performance boost disappears when the devices are
3 performing real-world tasks instead of running benchmarking apps.

4 25. In manipulating the benchmark performance of the Galaxy S4, Samsung effectively made false
5 representations to persons who ran benchmarking apps on the Galaxy, and it did so with the
6 knowledge and/or intent that such false representations would be passed on to consumers and
7 that it would influence their purchase decisions.

8 26. The false statements that Samsung made through benchmark manipulations were passed on to
9 the consumers through reviews published prior to the launch of the Galaxy S4 in the United
10 States. Specifically, the following reviews, among others passed on the false and misleading
11 representations made by Samsung.

- 12 a. An online article titled “Samsung Galaxy S 4 review” found at
13 <http://www.engadget.com/2013/04/24/samsung-galaxy-s-4-review/> and published on
14 April 24th 2013 stated, in relevant part, as follows:

15
16 Generally speaking, flagships feature the latest and greatest components available at
17 the time of their release. **As you may have guessed, the Galaxy S 4 continues that**
18 **tradition, as evidenced by both everyday performance and synthetic**
19 **benchmarks.** This particular smartphone comes in two distinct flavors: one that uses
20 a 1.9GHz Qualcomm Snapdragon 600 chipset and one that debuts Samsung's octa-
21 core Exynos 5 chip clocked at 1.6GHz, the latter of which takes four Cortex-A15
22 processors and pairs them up with four A7s. Despite the fact that the Exynos chip
23 offers LTE compatibility in all 20 frequencies, the US carriers have all gone with the
24 Snapdragon model.

25 As a result, our conclusions on the phone's performance are based on tests with the
26 Snapdragon 600, which is paired with an Adreno 320 GPU and 2GB RAM. ...

27 ***

28 Although it's only been one year since the Galaxy S III was launched, the smartphone

1 industry has been the proud recipient of some hefty improvements in processing
2 power -- and it's not over yet. The once-dominating force of a Snapdragon S4 chipset
3 is now eclipsed by the Snapdragon 600, and we have a feeling history will repeat
4 itself later this year as soon as the 800 is unleashed into the world. Think about it: **out**
5 **of the six benchmarks above, the GS4 managed to set records in five of them,**
6 **with the One (the previous record-breaker) not too far behind.**
7 **The GS4 holds the record in five of our six benchmark tests.**

8 (emphasis added)

- 9 b. An online article titled “Samsung Galaxy S 4 Review” found at
10 <http://www.slashgear.com/samsung-galaxy-s-4-review-23278981/> and published on
11 Apr 23, 2013, stated, in relevant part, as follows:

12
13 Happily, whether you're running Samsung's apps or third-party software, we've got no
14 complaints as to how fast they run. **In Quadrant, the GALAXY S 4 scored 12,593**
15 **overall - just slightly ahead of the HTC One - while in Linpack for Android it**
16 **also bested HTC's phone, managing 749.63 MFLOPS compared to the One's**
17 **694.102.**

- 18 c. An online article titled “Samsung Galaxy S4 Review” found at
19 http://www.phonearena.com/reviews/Samsung-Galaxy-S4-Review_id3280 and
20 published on March 23, 2013, stated, in relevant part, as follows:

21
22 The Samsung Galaxy S phones have always been equipped with exceptional
23 processors and the Galaxy S4 is not an exception. The fourth Galaxy S will be
24 available in two versions. In some markets including the US and the UK, the handset
25 is going to ship with the Qualcomm Snapdragon 600 chipset, which is also available
26 in the HTC One. In some international markets, the GS4 will have the Samsung
27 Exynos 5 Octa, which is supposed to be a powerful, yet efficient octa-core CPU. The
28 unit we're testing for this review is powered by the Snapdragon 600 CPU and boy is

1 this thing fast! This powerful, cutting-edge chipset is clocked at 1.9 GHz to offer
 2 unsurpassed performance no matter what task is being executed.

3 ***

4 **Performance benchmarks**

5	Quadrant Higher is better	HTC One 12481 Samsung Galaxy S4 12078 Sony Xperia Z 8221 Samsung Galaxy S III 5335
6		HTC One 23308
7	AnTuTu Higher is better	Samsung Galaxy S4 24701 Sony Xperia Z 20835 Samsung Galaxy S III 15152
8	GFXBench Egypt HD 2.5 onscreen (fps) Higher is better	HTC One 31 Samsung Galaxy S4 39
9		HTC One 781
10	Vellamo Metal Higher is better	Samsung Galaxy S4 704 Sony Xperia Z 626
11	Vellamo HTML 5 Higher is better	HTC One 2395 Samsung Galaxy S4 1702 Sony Xperia Z 2198
12	<input type="checkbox"/>	

13 d. A review from PCMag.com found at
 14 <http://www.pcmag.com/article2/0,2817,2417990,00.asp> and published on April 24,
 15 2013, stated, in relevant part, as follows:

16
 17 Samsung has something for everyone in the Android-powered Galaxy S 4 (\$149.99).
 18 It's this year's no-brainer: the phone to get if you don't want to worry about which
 19 phone to get. No matter what you want to do, the Galaxy S 4 can get it done. That
 20 makes it our Editors' Choice for full-touch smartphones on T-Mobile.

21 **Basic Performance and Networking**

22 **The Galaxy S 4 is the fastest smartphone we've benchmarked so far**, thanks to its
 23 1.9GHz quad-core Qualcomm Snapdragon 600 processor. Yes, some other
 24 international S 4 models will get the Samsung Exynos octo-core, but that processor
 25 isn't necessarily any faster or better, it just takes a different approach to a low-power
 26 mode.

27 Along with the processor, Samsung gets props for running Android 4.2.2, the latest
 28 version of Google's mobile OS. **The 1.9GHz Snapdragon torched the processor-**

1 **dependent Antutu benchmark**, but it also did unusually well on Basemark OS,
2 which launches real applications, and on the GLBenchmark graphics benchmark.
3 Even pushing all the pixels on a 1080p screen, **this is the fastest Android phone**
4 **available**.

5 (emphasis added)

- 6 e. An article found at [http://www.sammobile.com/2013/04/10/galaxy-s4s-latest-](http://www.sammobile.com/2013/04/10/galaxy-s4s-latest-benchmark-confirms-samsungs-exynos-5-octa-kills-qualcomms-snapdragon-600/)
7 [benchmark-confirms-samsungs-exynos-5-octa-kills-qualcomms-snapdragon-600/](http://www.sammobile.com/2013/04/10/galaxy-s4s-latest-benchmark-confirms-samsungs-exynos-5-octa-kills-qualcomms-snapdragon-600/) and
8 published on April 10, 2014, stated, in relevant part, as follows:

9
10 Today at SamMobile, we received the latest benchmark tests of the Galaxy S4 GT-
11 I9500 (Exynos 5 Octa variant) with Samsung's latest test firmware installed and the
12 results are highly impressive. In previous test firmwares Samsung had clocked the
13 Exynos 5 Octa CPU to 1.8GHz but in the most recent test firmware it has been
14 decreased to 1.6GHz, as Samsung officially announced.

15 ***

16 Our insider's Galaxy S4 (GT-I9500) scored a whooping 28018 points on Antutu. **The**
17 **Snapdragon equipped Galaxy S4 (GT-I9505) scored 23607 points, as**
18 **benchmarked by the folks at GSMArena.** We expect the Korean variant (SHV-
19 E300S) to score 30000+ points and one thing is for sure, the Korean Galaxy S4 SHV-
20 E300S will be the fastest device on the planet.

21 (emphasis added)

- 22 f. An article titled "Samsung Galaxy S4 Review" found at
23 <http://www.digitaltrends.com/cell-phone-reviews/samsung-galaxy-s4-review/> and
24 published on April 23, 2013, stated, in relevant part, as follows:

25
26 **Performance and Specs**

27 Here in the United States, the Galaxy S4 'only' has a quad-core processor. Some of
28 the overseas models get the fancy new octa-core CPU, but not us. **Still, the 1.9-GHz**

1 **quad-core processor and 2GB of RAM are plenty speedy and scored 12,185 on**
2 **the Quadrant benchmark.** That’s on par with the HTC One (12,031) and higher
3 than the LG Optimus G Pro (11,780), both quad-core phones.

4 (emphasis added)

- 5 g. A Slate.com article titled “the Great Smartphone Conundrum” found at
6 [http://www.slate.com/articles/technology/technology/2013/03/samsung_galaxy_s4_th](http://www.slate.com/articles/technology/technology/2013/03/samsung_galaxy_s4_the_time_has_come_we_re_going_to_have_to_choose_between.2.html)
7 [e_time_has_come_we_re_going_to_have_to_choose_between.2.html](http://www.slate.com/articles/technology/technology/2013/03/samsung_galaxy_s4_the_time_has_come_we_re_going_to_have_to_choose_between.2.html) published on
8 March 26 2013, stated, in relevant part, as follows:

9
10 It’s not just Apple’s phones that are seeing incredible speed increases. Indeed, the
11 half-year-old iPhone 5 is now looking creaky beside the Android smartphones being
12 released this year. The new HTC One earned a Geekbench score of 2,535—60
13 percent more than Apple’s top-of-the-line phone. **And Samsung’s upcoming Galaxy**
14 **S4 posted a stunning 3,163, twice as fast as the iPhone 5.**

15 In fact, the S4’s score is high enough that just a few years ago, it would have ranked
16 as a pretty respectable full-fledged PC. Apple’s 2009-era MacBook Pro, for instance,
17 scored around 3,200 on Geekbench. In other words, today’s fastest phones are
18 comparable to four-year-old high-end laptops.

19 (emphasis added)

- 20 h. A Primate Labs article titled “Samsung Galaxy S4 Benchmarks” found at
21 <http://www.primatelabs.com/blog/2013/03/samsung-galaxy-s-4-benchmarks/>
22 published on March 18, 2013, stated in relevant part, as follows:

23
24 It's clear that the Samsung Galaxy S 4 will be the fastest smartphone available when it
25 is released in April.

26 ***

27 The Samsung Galaxy S 4 is also twice as fast as the Apple iPhone 5.

- 28 27. The assertion from reviewers and benchmark scores that the Samsung Galaxy S4 was “twice as

1 fast” as the Apple iPhone 5 based on benchmarks was picked up and repeated by numerous
2 online sources in the weeks leading up to the launch of the Galaxy S4. This statement appeared,
3 among other places, in articles on the following sites:

- 4 a. International Business Times, “Samsung Galaxy S4 Twice As Fast As iPhone 5, Even
5 Galaxy S3 Proves Faster Than Apple’s Latest [Report]”,
6 [http://www.ibtimes.com/samsung-galaxy-s4-twice-fast-iphone-5-even-galaxy-s3-
7 proves-faster-apples-latest-report-1135011](http://www.ibtimes.com/samsung-galaxy-s4-twice-fast-iphone-5-even-galaxy-s3-proves-faster-apples-latest-report-1135011), March 19, 2013.
 - 8 b. Business Insider, “Samsung's Galaxy S4 Is Twice As Fast As The iPhone 5”,
9 [http://www.businessinsider.com/samsung-galaxy-s4-versus-iphone-5-speeds-2013-3,](http://www.businessinsider.com/samsung-galaxy-s4-versus-iphone-5-speeds-2013-3)
10 March 19, 2013.
 - 11 c. Redmond Pie, “Galaxy S4 Benchmarks Are In: Twice As Fast As iPhone 5”,
12 [http://www.redmondpie.com/galaxy-s4-benchmarks-are-in-twice-as-fast-as-iphone-
13 5/](http://www.redmondpie.com/galaxy-s4-benchmarks-are-in-twice-as-fast-as-iphone-5/), March 19, 2013.
 - 14 d. MacRumors, “Samsung Galaxy S 4 Benchmarks Nearly Twice as Fast as iPhone 5”,
15 [http://www.macrumors.com/2013/03/18/samsung-galaxy-s-4-benchmarks-nearly-
16 twice-as-fast-as-iphone-5/](http://www.macrumors.com/2013/03/18/samsung-galaxy-s-4-benchmarks-nearly-twice-as-fast-as-iphone-5/), March 18, 2013.
 - 17 e. iDownloadBlog, “Galaxy S4 benchmarks almost twice as fast as the iPhone 5”,
18 <http://www.idownloadblog.com/2013/03/18/galaxy-s4-benchmark-test/>, March 18,
19 2013.
- 20 28. Samsung’s representations regarding the speed and performance of the Galaxy S4 were
21 intentionally false when made. These manipulations were discovered by independent testers
22 affiliated with the website AnandTech in the summer of 2013. As detailed in articles posted on
23 that site, the testers found that that the firmware in the Samsung Galaxy S4 was hard-coded the
24 Quadrant, linpack, Benchmark Pi, and AnTuTu benchmarking apps by their names, and to
25 automatically increase performance when they were detected. See
26 <http://www.anandtech.com/show/7187/looking-at-cpugpu-benchmark-optimizations-galaxy-s-4>
27 and <http://www.anandtech.com/show/7192/update-on-gpu-optimizations-galaxy-s-4>.
- 28 29. After the manipulations were discovered, ArsTechnica did follow-up analysis and found that the

1 SunSpider, Rightware and Geekbench benchmarks were also affected by Samsung's
2 manipulations. See [http://arstechnica.com/gadgets/2014/03/samsungs-kitkat-update-seems-to-
4 remove-benchmark-boosting-shenanigans/](http://arstechnica.com/gadgets/2014/03/samsungs-kitkat-update-seems-to-
3 remove-benchmark-boosting-shenanigans/)

4 30. Samsung intentionally cheated on benchmarking apps to create a false perception regarding the
5 speed and performance of the Galaxy S4, to thereby create PR "buzz" to increase the demand for
6 its new devices, and to support a high price-point for these devices—all to the detriment of the
7 buying public.

8 31. Samsung's actions in this regard constituted false and misleading statements in that a reasonable
9 person would consider the Galaxy S4's speed and performance in comparison to competing
10 devices in deciding whether to purchase the Galaxy S4.

11 **Memory Capacity**

12 32. In their advertising and on the packaging for the Galaxy S4 phone, Samsung has consistently
13 represented that the S4 has 16 GB of storage capacity. (See, e.g.,
14 <http://www.samsung.com/us/mobile/cell-phones/SCH-I545ZWAVZW-specs>) However,
15 Samsung does not disclose that approximately half that storage capacity is not accessible due to
16 preinstalled software.

17 33. When Samsung announced the impending release of the Galaxy S4, Samsung publicly released
18 information about the memory capacity and specifications of the Galaxy S4, including that it had
19 16 GB of storage capacity, with knowledge, reason to know, and/or intent that the information
20 would be repeated by sellers of the phone on that consumers purchasing the phones would rely
21 on the information.

22 34. Samsung knew, but did not disclose that: (a) 16 GB are not actually available to consumers to
23 store files, media and apps on the Galaxy S4; (b) the operating system on the S4 consumes nearly
24 7 GB of the 16 GB advertised capacity; and (c) that amount of memory used by the operating
25 system on the Galaxy S4 is much higher (both in terms of total memory and percentage of
26 memory utilized) than for comparable smart phones.

27 35. Samsung's omission of these facts renders its statements regarding the Galaxy S4's memory
28 capacity deceptive and misleading in that a reasonable person would consider the omitted

1 information in deciding whether to purchase the Galaxy S4.

2 **Plaintiff's Purchase**

3 36. Plaintiff Norcia purchased a Samsung Galaxy S4 smartphone through a Verizon retail store on
4 May 23, 2013, shortly after it became available for sale in the United States. The retail price of
5 the phone at the time of purchase was \$649.99. Plaintiff Norcia paid a discounted price of
6 \$249.99 (plus taxes and fees) for the phone at the time of purchase because he agreed to extend
7 his service contract with Verizon.

8 37. After the Galaxy S4 was announced, and in advance of purchasing, Plaintiff Norcia read online
9 reviews of the Galaxy S4, including reviews that discussed the Galaxy S4's speed and
10 performance on benchmark tests. In addition, Plaintiff Norcia viewed the product specifications
11 on websites reviewing the Galaxy S4 and/or announcing the release of the Galaxy S4 that the
12 Galaxy S4 has 16 GB of memory capacity. These third-party statements regarding the
13 specifications of the Galaxy S4 were based on Samsung's own public statements regarding the
14 specifications of the Galaxy S4, which Samsung knew, intended, and/or had reason to know
15 would be repeated by third parties and ultimately communicated to consumers making purchase
16 decisions.

17 38. At no time prior to purchase did Samsung disclose to Plaintiff Norcia that the Galaxy S4 was
18 programmed to cheat on benchmarking tests, that 16 GB are not actually available to consumers
19 to store files, media and apps on the Galaxy S4, that the operating system on the S4 consumes
20 nearly 7 GB of the 16 GB advertised capacity, or that the amount of memory used by the
21 operating system on the Galaxy S4 is much higher (both in terms of total memory and percentage
22 of memory utilized) than for comparable smart phones.

23 **CLASS ALLEGATIONS**

24 39. Plaintiff alleges and asserts the claims for relief herein on his own behalf, and further seeks
25 certification of this case as a class action on behalf of similarly situated persons pursuant to Rule
26 23(b) of the Federal Rules of Civil Procedure.

27 40. Specifically, Plaintiff requests certification on behalf of the following Classes of persons:

28 All persons or entities who purchased one or more 16 GB Galaxy S4 phones in

1 the State of California. (The “California Class”)

2 And:

3 All persons or entities who purchased one or more 16 GB Galaxy S4 phones in
4 the State of California for personal, family, or household purposes. (The
5 “California Consumer Class”)

- 6 41. Excluded from the Classes are Samsung, its parents and subsidiaries, its officers, directors and
7 their immediate families, the Court and its employees, as well as counsel for the parties.
- 8 42. The claims for relief asserted herein satisfy the prerequisites for certification as a class action
9 pursuant to Federal Rule of Civil Procedure 23(b)(3):
- 10 a. There are questions of law or fact common to the classes;
 - 11 b. The claims or defenses of the representative parties are typical of the claims or defenses
12 of the classes;
 - 13 c. The representative party will fairly and adequately protect the interests of the class;
 - 14 d. The questions of law or fact common to class members predominate over any questions
15 affecting only individual members; and
 - 16 e. A class action is superior to other available methods for fairly and efficiently adjudicating
17 the controversy.
- 18 43. Numerosity. The proposed Classes consists of an unknown number of individuals likely
19 numbering at least in the thousands such that joinder of individual claims in a single action
20 would be impracticable.
- 21 44. Commonality. Plaintiff’s and class members’ claims raise predominantly common factual and
22 legal questions that can be answered for all class plaintiffs through a single class-wide
23 proceeding. For example, to resolve the claims of any member of the classes, it will be necessary
24 to answer the following factual and legal questions:
- 25 a. Whether Samsung’s advertising, marketing, product packaging and benchmark
26 manipulations were untrue, misleading, or reasonably likely to deceive;
 - 27 b. Whether Samsung knew its conduct and statements were false or misleading;
 - 28 c. Whether Samsung’s statements, conduct and/or omissions were material;
 - d. Whether Samsung’s conduct violated the California Consumers Legal Remedies Act,

1 Civil Code §1750, *et seq.*

2 e. Whether Defendant's conduct constituted unlawful, unfair, and/or fraudulent business
3 practices in violation of California's Unfair Competition Law (the "UCL"), Business &
4 Professions Code §17200, *et seq.*

5 45. Typicality. Plaintiff's claims are typical of Class members' claims because each arises from a
6 common course of conduct by Samsung.

7 46. Adequacy. Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff's
8 interests do not conflict with class interests, and Plaintiff has retained counsel experienced in
9 complex class action litigation to vigorously prosecute this action on behalf of the class.

10 47. Predominance. Common questions of law and fact predominate over any questions affecting
11 only individual class members and a class action is superior to individual litigation.

12 48. Superiority. Under the facts and circumstances set forth above, class proceedings are superior to
13 any other methods available for both fair and efficient adjudication of the rights of each member
14 of the Classes, because joinder of individual members of the Classes is not practical and, if the
15 same were practical, said Class members could not individually afford the litigation, such that an
16 individual litigation would be inappropriately burdensome, not only to said citizens, but also the
17 courts.

18 49. To process individual cases would both increase the expenses and cause delay not only to Class
19 members, but also to Samsung and the Court.

20 50. In contrast, a class action of this matter will avoid case management difficulties and provide
21 multiple benefits to the litigating parties, including efficiency, economy of scale, unitary
22 adjudication with consistent results, and equal protection of the rights of each Class member, all
23 by way of the comprehensive and efficient supervision of the litigation by a single court.

24 51. Notice of the pendency of the action and of any result or resolution of the litigation can be
25 provided to Class members by direct mail, the usual forms of publication, and/or such other
26 methods of notice as deemed appropriate by the Court.

27 52. Without class certification, the prosecution of separate actions by individual members of the
28 Class described above would create a risk of inconsistent or varying adjudications with respect to

1 individual members of the Classes that would establish incompatible standards of conduct for
2 defendants, and/or adjudications with respect to the individual members of the Classes that
3 would, as a practical matter, be dispositive of the interests of the other members not parties to the
4 adjudication, or would substantially impair or impede their ability to protect their interest.

5 53. Defendant has acted or refused to act on grounds that apply generally to the class and
6 certification is therefore proper pursuant to Federal Rule of Civil Procedure 23(b)(2).

7 **FIRST CLAIM FOR RELIEF**

8 **Violation of California Consumers Legal Remedies Act, Civil Code §1750, et seq.**

9 **By Plaintiff and the California Consumer Class Against Samsung**

10 54. Plaintiff re-alleges and incorporates by reference all paragraphs set forth above.

11 55. Plaintiff and the California Consumer Class are consumers as defined by the CLRA.

12 56. The Galaxy S4 phones are goods within the meaning of the CLRA.

13 57. Samsung Telecommunications and Samsung Electronics America are suppliers and/or sellers
14 within the meaning of the CLRA.

15 58. Samsung Telecommunications and Samsung Electronics America violated Civil Code
16 §1770(a)(5) by representing that the Galaxy S4 had characteristics, uses, and benefits that it did
17 not have.

18 59. Samsung Telecommunications and Samsung Electronics America violated Civil Code
19 §1770(a)(9) by advertising goods or services with intent not to sell them as advertised.

20 60. Plaintiff and the Class relied on Samsung's misrepresentations and omissions in deciding
21 whether to purchase the Galaxy S4.

22 61. As a direct and proximate result of Samsung's conduct, Plaintiff and the Class have suffered
23 injury and damage in an amount to be determined at trial.

24 62. At this time, Plaintiff disclaims damages under the CLRA, but seeks an order from this Court
25 enjoining the conduct alleged herein.

26 63. Plaintiff reserves the right to amend this Complaint and to assert a claim for damages pursuant to
27 Civil Code §1782.

28 **SECOND CLAIM FOR RELIEF**

Unfair Competition Law

By Plaintiff and the California Class Against Samsung

64. Plaintiff incorporates and re-alleges all other paragraphs as if fully set forth herein.

65. The conduct of Samsung alleged herein constitutes unlawful and unfair business practices in violation of the UCL, Bus. & Prof. Code §17200, *et seq.*, in that the violations of the CLRA also constitute unlawful and unfair business practices under the UCL.

66. The conduct of Samsung alleged herein also constitutes fraudulent business practices in violation of the UCL, Bus. & Prof. Code §17200, *et seq.*, in that said conduct was likely to deceive reasonable consumers.

67. Bus. & Prof. Code §17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such violative conduct. As a direct and proximate result of the conduct alleged herein acts, Plaintiff and the Classes were injured and suffered the loss of money through making purchases that they would not have made, or they would have paid significantly less for them, in the absence of such conduct.

68. Wherefore Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF

False Advertising Law

By Plaintiff and the California Class Against Samsung

69. Plaintiff incorporates and re-alleges all other paragraphs as if fully set forth herein.

70. Samsung, with the intent, directly or indirectly, to induce members of the public to purchase Samsung's goods, has made or caused to be made statements to the public in California that were untrue or misleading in violation of Bus. & Prof. Code §17500, *et seq.*

71. Wherefore Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF

Fraud

By Plaintiff and the California Class Against Samsung

72. Plaintiff re-alleges and incorporates by reference all paragraphs set forth above.

73. Samsung's conduct as alleged herein constituted representations of material fact.

1 74. Samsung's representations were false.

2 75. Samsung knew the representations were false.

3 76. Samsung intended for Plaintiff and the Class to rely on those representations.

4 77. Plaintiff and the Class did rely on those representations.

5 78. Plaintiff and the Class were directly and proximately harmed by suffering the loss of money
6 through making purchases that they would not have made, or they would have paid significantly
7 less for them, in the absence of such conduct.

8 79. Samsung's conduct as alleged herein constitutes oppression, fraud, and/or malice such that
9 Samsung is liable for punitive damages.

10 80. Wherefore Plaintiff prays for relief as set forth below.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests of this Court the following relief, on behalf of himself and the
13 proposed Classes:

- 14 a. An order certifying the proposed class pursuant to Rule 23 and appointing Plaintiff and
15 his counsel to represent the class;
- 16 b. Appropriate injunctive relief and/or declaratory relief, including an order requiring
17 Samsung to cease the conduct alleged herein;
- 18 c. Restitution;
- 19 d. Punitive damages;
- 20 e. Attorneys' fees and costs of suit, including expert witness fees; and
- 21 f. Such other and further relief as the Court may deem appropriate.
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

DATED: November 10, 2014

Respectfully submitted,

PROMETHEUS PARTNERS L.L.P.

By: /s/ EDUARDO G. ROY

Eduardo G. Roy
Attorneys for Plaintiff
DANIEL NORCIA

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