

1 ROBERT C. SCHUBERT (S.B.N. 62684)  
2 (rschubert@sjk.law)

3 AMBER L. SCHUBERT (S.B.N. 278696)  
4 (aschubert@sjk.law)

5 **SCHUBERT JONCKHEER & KOLBE LLP**  
6 Three Embarcadero Center, Suite 1650  
7 San Francisco, California 94111  
8 Telephone: (415) 788-4220  
9 Facsimile: (415) 788-0161

10 *Counsel for Plaintiff Martin*

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

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

14 SHAKIRA MARTIN, individually and  
15 on behalf of all others situated,

16 Plaintiffs,

17 v.

18 SAMSUNG ELECTRONICS CO., LTD  
19 and SAMSUNG ELECTRONICS  
20 AMERICA, INC.,

21 Defendants.  
22

Case No. 5:22-cv-01607

**CLASS ACTION COMPLAINT**

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 Shakira Martin (“Plaintiff”) brings this consumer class action against  
2 Defendant Samsung Electronics Co., Ltd., a South Korean corporation, and  
3 Defendant Samsung Electronics America, Inc., a Delaware corporation (collectively  
4 referred to as “Defendants,” “Samsung,” or the “Company”), for misleading  
5 consumers about the performance of certain Samsung Galaxy devices. Plaintiff’s  
6 allegations are based upon personal knowledge as to her own acts and upon her  
7 investigation, the investigation of counsel, and information and belief as to all other  
8 matters. Plaintiff, on behalf of herself and all others similarly situated, alleges as  
9 follows:

### 10 INTRODUCTION

11 1. This is a class action brought on behalf of purchasers of Samsung  
12 Galaxy devices (“Devices”), including but not limited to models S10, S20, S21, and  
13 S22 and versions “FE,” “Plus,” and “Ultra” (collectively referred to as “Devices”),  
14 sold by Defendants Samsung Electronics Co, Ltd. and Samsung Electronics  
15 America, Inc.

16 2. As alleged herein, the Company utilized a Samsung application called  
17 Game Optimizing Service (“GOS”), which effectively slowed down or “throttled”  
18 the performance of over 10,000 applications, including Instagram, Facebook,  
19 YouTube, TikTok, Amazon, Twitter, Netflix, DisneyPlus, and Microsoft Office.  
20 However, popular “benchmarking” applications—which are tools that allow  
21 consumers to compare the performance of various smartphones and verify  
22 smartphone manufacturer’s claimed performance—were not throttled by GOS.  
23 Accordingly, Samsung falsely represented the Devices true speed, performance, and  
24 battery life. The Company did not disclose this to consumers upon purchasing the  
25 Devices.

26 3. Instead, Samsung continued to tout the “smooth, high-quality  
27 performance” and “powerful, intelligent battery” of its Devices, despite knowing  
28 that its performance claims were based on false and deceptive benchmarking

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 metrics. By advertising the performance statistics garnered from popular  
2 benchmarking applications, Samsung was able to manipulate purchasers into buying  
3 expensive products that did not in fact operate at the claimed high performance.

4 4. In deciding to purchase her Samsung Galaxy S21, Plaintiff believed and  
5 relied on statements made by Samsung regarding the devices' alleged speed and  
6 performance and ultimately purchased the device due to its allegedly superior speed,  
7 battery life, and overall performance.

8 5. Plaintiff and the Class (as defined below) have suffered damages as a  
9 direct result of the Company's false and disingenuous marketing, advertising, and  
10 packaging of the Devices. Samsung's misrepresentations and omissions violate  
11 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et*  
12 *seq.*, and the Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 *et*  
13 *seq.*

#### 14 PARTIES

15 6. At all relevant times, Plaintiff Martin has resided in Victorville,  
16 California. Martin purchased the Samsung Galaxy S21 on June 15, 2021 at the  
17 Spectrum Charter store in Victorville, California (14400 Bear Valley Rd unit 109,  
18 Victorville, CA 92392). Upon purchasing the smartphone, a representative at the  
19 Spectrum charter store set up Martin's phone for her from start to finish. At no time  
20 during this process did Martin agree to Samsung's terms and conditions, and to the  
21 extent those terms and conditions may have included an arbitration agreement,  
22 Martin did not agree to it. When the Spectrum representative handed Martin her new  
23 Samsung Galaxy S21 smartphone, it was already fully set up.

24 7. In deciding to purchase her Samsung Galaxy S21, Martin believed and  
25 relied upon Samsung's statements stating that the "5nm processor" was the "fastest  
26 processor ever." This statement, touting the elite performance and speed of the  
27 Samsung S21, was prominently listed on Samsung's website and was material to  
28 Plaintiff Martin. Martin also watched many product reviews on YouTube that

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 compared the Apple iPhone to the Samsung Galaxy S21. She purchased the Device  
2 because, based on Samsung’s representations about the Galaxy S21 smartphone’s  
3 speed and performance, she believed that the Samsung Galaxy S21 had a faster  
4 processing speed and superior performance.

5 8. With Martin’s June 15, 2021 purchase, she switched from an Apple  
6 device to the Samsung Galaxy S21, believing the Samsung Galaxy S21 would  
7 provide her with an upgraded performance and quicker speed. However, shortly after  
8 purchasing her Samsung Galaxy S21, Martin discovered that this smartphone’s  
9 performance frequently lagged and it was not working as fast as she expected.  
10 Martin reached out to the Spectrum Charter store and submitted a warranty claim,  
11 but she only received the same exact phone in the mail. The replacement Device did  
12 not resolve her issues concerning the smartphone’s speed and performance.

13 9. Martin purchased and paid substantially more for her Galaxy S21 than  
14 she would have if she had known the truth about the Devices. Martin has suffered  
15 actual damages in the form of her overpayment for the Device, which she purchased  
16 as a result of Samsung’s misrepresentations and omissions. Samsung did not inform  
17 Martin of the truth about its throttling manipulation of the Devices, resulting in  
18 reduced speed, performance, and battery life. Had Martin known that Samsung  
19 manipulated the performance of its Devices through throttling, she would either not  
20 have purchased the Device or would have paid substantially less for it. At present,  
21 Martin has concerns about purchasing a Device for herself and she does not know  
22 whether it will continue to be throttled and whether Samsung’s advertising will  
23 continue to be false and misleading. In the future, Martin would pay a premium for a  
24 Samsung Device if it did, in fact, offer the speed and performance that Samsung  
25 promised. In addition to restitution, Martin also seeks injunctive relief to enjoin  
26 Samsung from continuing to manipulate its Devices through throttling and  
27 continuing to mislead her and other consumers through its advertising.  
28

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1           10. Defendant Samsung Electronics Co, Ltd. is a South Korean corporation,  
2 with its corporate headquarters at 129 Samseong-ro Yeongtong-gu Gyeonggi-do  
3 16677 Suwon-Shi Korea. Defendant Samsung Electronics Co, Ltd. serves as the  
4 umbrella company in which Defendant Samsung Electronics America, Inc. functions  
5 under. Defendant Samsung Electronics Co, Ltd. produces an extensive assortment of  
6 consumer and industry electronics, including mobile phones, laptops, televisions,  
7 appliances, memory chips, semiconductors, and integrated systems.

8           11. Defendant Samsung Electronics America, Inc. is a Delaware  
9 corporation, with its corporate headquarters located at 85 Challenger Road  
10 Ridgefield Park, New Jersey 07660. Samsung Electronics America, Inc.  
11 manufactures electronic products, including cell phones, computers, storage devices,  
12 home appliances, security systems, televisions, and smartwatches.

13           12. Defendants Samsung Electronics Co, Ltd. and Defendant Samsung  
14 Electronics America, Inc. are collectively referred to as “Defendants, “Samsung,” or  
15 the “Company.”

16   **JURISDICTION AND VENUE**

17           13. This Court has original jurisdiction over this action pursuant to the  
18 Class Action Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is  
19 a citizen of a state other than that of Defendants, and the aggregate amount in  
20 controversy exceeds \$5,000,000, exclusive of interest and costs.

21           14. The Court has personal jurisdiction over Defendants pursuant to 18  
22 U.S.C. § 1965(a) because Samsung was engaged in the marketing and selling of  
23 Devices in the State of California, and Plaintiff purchased her Samsung device from  
24 a store in California.

25           15. This Court has personal jurisdiction over the Plaintiff because Plaintiff  
26 submits to the Court’s jurisdiction.

27           16. Venue is proper in this District under 28 U.S.C. § 1391 because a  
28 substantial part of the events or omissions giving rise to the violations of law

1 occurred in this District, and Defendants are subject to personal jurisdiction in this  
2 District.

### 3 **FACTUAL ALLEGATIONS**

#### 4 **A. The Smartphone Market**

5 17. Samsung Electronics Co, Ltd. is headquartered in South Korea and is a  
6 subsidiary of the multinational Samsung Group conglomerate that has auxiliaries in  
7 a myriad of varied industries, including consumer electronics, construction, defense,  
8 aerospace, and shipbuilding. Samsung Electronics Co, Ltd operates five divisions,  
9 including Samsung Mobile. Samsung Mobile independently operates four divisions,  
10 including Consumer Electronics, Information Technology and Mobile  
11 Communications, Device Solutions, and the Research and Development Center. The  
12 Information Technology and Mobile Communications division produces and sells  
13 mobile devices, computers, and digital cameras.

14 18. Attesting to the company’s extensive influence in the expanding  
15 smartphone market, Samsung Electronics Co, Ltd. reported \$72 billion in  
16 smartphone sales globally in 2021.<sup>1</sup> In 2021, the Company shipped over 270 million  
17 smartphones, which was the highest number of shipments from any smartphone  
18 manufacturer in that year. Combined, Apple Inc. (“Apple”) and Samsung make up  
19 close to 40% of the still-expanding global smartphone market. Currently, over 80%  
20 of the world’s population owns a smartphone.

21 19. In the United States, the smartphone market mirrors the growth seen  
22 worldwide. There are currently over 290 million smartphone users in the United  
23 States, with approximately 80% of them owning either an Apple or Samsung device,  
24 according to a study published by Statistica. Apple’s iPhone is the most popular  
25 smartphone in the United States, with over 50% of United States subscribers using  
26 an Apple device as of 2021. Samsung’s Galaxy smartphones are the second most

27 \_\_\_\_\_  
28 <sup>1</sup> <https://www.statista.com/statistics/299144/samsung-smartphone-shipments-worldwide/>

1 popular, with over 25% United States subscribers as of 2021. Since the introduction  
2 of the Samsung Galaxy S10 product line in 2019, the Samsung Galaxy S line has  
3 been one of Defendant’s main product lines.

4 20. The introduction of the Samsung Galaxy S10 series in February 2019  
5 boosted the Company’s sales due to improvements including the ‘Infinity-O  
6 Display,’ a bigger battery, and more megapixels. The Company’s website states that  
7 the Galaxy S10 “redefines the Galaxy S style, creating a new standard” and  
8 specifically touts its “longer-lasting battery” due to the phone’s ability to  
9 “intelligently (learn) your App usage patterns to maximize battery performance and  
10 efficiency.” The Samsung Galaxy S10 series was also the first version of Samsung  
11 Galaxy S phones that was impacted by the GOS benchmark manipulation.

12 21. Since the announcement of the Samsung Galaxy S10 in 2019, the  
13 Company has also released the Samsung Galaxy S20 series, the Samsung Galaxy  
14 S21 series, and the Samsung Galaxy S22 series, all of which have had their  
15 performance manipulated by the GOS benchmarking application.

16 22. The following table outlines the Samsung Galaxy S devices known to  
17 be affected by the GOS benchmarking manipulation, as well as the date they were  
18 announced and approximate retail price. The following list is not all-encompassing  
19 and may be further developed upon discovery.

Device	Date Announced
Samsung Galaxy S10	February 20, 2019
Samsung Galaxy S10 Plus	February 20, 2019
Samsung Galaxy S10 Ultra	February 20, 2019
Samsung Galaxy S10 FE	January 3, 2020
Samsung Galaxy S20	February 11, 2020
Samsung Galaxy S20 Plus	February 11, 2020

1	Samsung Galaxy S20 Ultra	February 11, 2020
2	Samsung Galaxy S20 FE	September, 2020
3	Samsung Galaxy S21	January 14, 2021
4	Samsung Galaxy S21 Plus	January 14, 2021
5	Samsung Galaxy S21 Ultra	January 14, 2021
6	Samsung Galaxy S21 FE	January 3, 2022
7	Samsung Galaxy S22	February 9, 2022
8	Samsung Galaxy S22 Plus	February 9, 2022
9	Samsung Galaxy S22 Ultra	February 9, 2022
10	Samsung Galaxy S22 FE	TBA

### 13 **B. Samsung's Deceptive Performance Manipulation**

14 23. Benchmarking applications are programs that conduct a sequence of  
 15 uniform tests on smartphone processors and time how long it takes for them to finish  
 16 the functions. Benchmarking quantitatively determines how a specific smartphone is  
 17 performing relative to other devices on the market—smartphones that perform the  
 18 tests at quicker speeds receive higher scores. Popular Android and iOS  
 19 benchmarking applications include Geekbench, GFXBench, 3DMark, AnTuTu,  
 20 PCMark, and GFXBench.

21 24. Online reviewers and bloggers use these benchmarking applications to  
 22 run tests and evaluate, compare, and rank various smartphones. Samsung is attentive  
 23 to the fact that benchmark testing is a common measurement of smartphone  
 24 performance and plays a critical role in reviewers' overall analysis of Devices.  
 25 Samsung is also well-aware that purchasers rely on online reviews and blogs to  
 26 compare the performance of various smartphones and verify smartphone  
 27 manufacturer's claimed performance.  
 28



SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1           25. Reports that Samsung was deceptively manipulating its Devices’  
2 performance came to the forefront of consumer attention on or about March 2, 2022,  
3 a few weeks after the introduction of the Galaxy S22 series. Reports emerged that  
4 the Defendant pre-installed Samsung application GOS onto some of its Devices,  
5 which effectively slowed down or “throttled” the performance of over 10,000  
6 applications, including Instagram, Facebook, YouTube, TikTok, Amazon, Twitter,  
7 Netflix, DisneyPlus, and Microsoft Office.

8           26. However, popular benchmarking applications were not throttled by  
9 GOS and therefore, when utilized by outside sources to determine the Devices  
10 performance, Samsung falsely represented the Devices true speed, performance, and  
11 battery life. The Company did not disclose its throttling manipulation to consumers.

12           27. When a smartphone user opens any application on the Devices, the  
13 GOS application processes and identifies each application based on its name and  
14 then determines whether to throttle the application’s performance.

15           28. YouTube user 네모난꿈 posted a video<sup>2</sup> on February 25, 2022 that  
16 highlights Samsung’s intentional throttling of non-benchmarking applications, while  
17 leaving benchmarking applications alone to operate at full speed. The user’s video  
18 reveals a side-by-side performance scores of the same application with two different  
19 names. The user first ran a performance test for a common benchmarking application  
20 called 3DMark, which was not throttled by the Samsung Galaxy device, then  
21 changed the name of this application to popular game “Genshin Impact,” which is on  
22 the list of applications throttled by Defendant.

23           29. Even though it was the exact same application, the retitled application  
24 had a notably lower benchmark score and average frame rate, reducing its overall  
25 score from 2618 to 1141. Other users have also performed these tests with the same  
26 outcome.

27  
28 <sup>2</sup> <https://www.youtube.com/watch?v=Vtt2g3BlwM8>

1           30. Applications deliberately throttled by Samsung operate at an  
2 exponentially slower speed than non-throttled applications. Thus, because Samsung  
3 programmed GOS to slow down the performance of non-benchmarking applications,  
4 but not influence the performance of benchmarking applications, the Devices  
5 function quicker when they identify benchmarking applications. Thus, Samsung  
6 intentionally took measures to advertise the Devices as though the performance of  
7 non-throttled benchmarking applications represents the performance of the Devices  
8 across the board, which intentionally misled Device purchasers.

9           31. Employing power-saving features to improve performance and prevent  
10 overheating is not a new practice for smartphone manufacturers, including Samsung.  
11 In fact, on February 7, 2014, Plaintiff Daniel Norcia filed a class action complaint  
12 against the same Samsung defendants for having “intentionally misled the public in  
13 order to boost sales of the flagship Galaxy S4 smartphones.” The Galaxy S4 was  
14 introduced in late April 2013. Plaintiff Norcia claimed that Defendants intentionally  
15 boosted the performance of popular benchmarking applications to artificially  
16 increase the S4’s marked speed. Plaintiff Norcia relied on Samsung’s false  
17 perception about the Galaxy S4’s speed and performance. Thus, Samsung’s conduct  
18 is not an isolated incident. It is a recurring pattern of intentionally misleading its  
19 customers about the speed and performance of its Devices.

### 20           **C. News of Samsung’s Deceptive Throttling Emerges**

21           32. Sparking the most recent public controversy, on March 2, 2022, Twitter  
22 user GaryeonHan tweeted the following statement, along with a list containing  
23 10,000 applications allegedly subjected to Defendant’s throttling:

24  
25           Samsung created an app called GOS and used the app to  
26 limit game performance, making the gaming experience  
27 worse. However, according to what the Korean  
28 community found out today, Samsung confirmed that it  
has put performance limits on more than 10,000 apps...  
that we use in our daily life, not just games. Importantly,

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

we confirmed that benchmarking apps such as Geekbench and 3dmark were not included in the list. This is a kind of scam.

33. On March 3, 2022, Samsung responded to the controversy and consumer outrage on Twitter, in Korean. The following translation to English was effectuated by Twitter user Dohyun Kim:

Hello. It's Samsung. We are constantly trying to expand the option for users and provide the most optimized performance converging customers' opinions. GOS (Game Optimizing Service) of the Samsung Galaxy S22 Series is pre-installed for optimizing the performance of CPU and GPU to prevent excessive heating when playing a game for a long time. To meet the recent needs of various customers, it is planned to update the Game Booster lab to provide an option to prioritize the performance, as soon as possible. Afterward, we will try our best for customers' satisfaction and safety by listening to their opinions. Thank You

34. Samsung spokesperson Kelly Yeo also told news outlet The Verge:

Our priority is to deliver the best mobile experience for consumers. The Game Optimizing Service (GOS) has been designed to help game apps achieve a great performance while managing device temperature effectively. GOS does not manage the performance of non-gaming apps. We value the feedback we receive about our products and after careful consideration, we plan to roll out a software update soon so users can control the performance while running game apps.

35. On March 4, 2022, Geekbench announced in a series of tweets that they had delisted Samsung Galaxy S10, S20, S21, and S22 from their browser.

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Earlier this week, we were made aware of Samsung's Game Optimizing Service (GOS) and how it throttles the performance of games and applications. GOS decides to throttle (or not to throttle) applications using application identifiers and not application behavior.

We view this as a form of benchmark manipulation as major benchmark applications, including Geekbench, are not throttled by this service.

After extensive internal testing we have determined the following Samsung Galaxy handsets use GOS:

- Samsung Galaxy S22 (all models)
- Samsung Galaxy S21 (all models)
- Samsung Galaxy S20 (all models)
- Samsung Galaxy S10 (all models)

Today we delisted these handsets from the Android Benchmark chart on the Geekbench Browser.

36. On March 7, 2022, Samsung released another public statement on their website, stating:

The Galaxy S22 series' GOS (Game Optimizing Service) is a service that monitors the phone's status and provides the optimal status to prevent stuttering, excessive performance degradation, and power consumption when running game apps.

Respecting the needs of our customers, we have lifted the initial performance limit even for high-end games and improved it so that you can use the CPU/GPU to the maximum.

In addition, a game performance management mode has been added to further improve product performance.

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1           37.     Moreover, Samsung was motivated to amplify their smartphones’  
2 marketable performance because, unlike its main competitor, Apple, Samsung does  
3 not have its own mobile operating system (“OS”). Apple designed, developed, and  
4 continues to update its own operating system called iOS, which is exclusively for  
5 Apple hardware. iOS was initially introduced in 2007 and allows Apple to separate  
6 itself from competitors.

7           38.     Samsung, on the other hand, uses the Android OS for all its Galaxy  
8 smartphones, just like over 70% of all Android manufacturers. Because Samsung’s  
9 OS is not a point of differentiation between themselves and other products on the  
10 market, Samsung knows that to maintain competitiveness, every new smartphone  
11 must be exceedingly more sophisticated with its speed, battery life, and  
12 performance.

13           39.     Additionally, the iPhone's general performance still greatly outweighs  
14 the benchmarks of any Samsung Galaxy Device. In a January 21, 2021 article titled  
15 *Samsung Galaxy S21 benchmarks: Faster but still no match for iPhone 12*,<sup>3</sup> Tom’s  
16 Guide concludes that the iPhone delivers the best overall smartphone performance  
17 after conducting cross-platform benchmarking tests:

18  
19                   Fans of Android phones will be happy to know the  
20                   Galaxy S21 lineup delivers the best performance we’ve  
21                   seen from an Android phones... Upgrade from an older  
22                   Android device, and you’ll definitely notice a  
23                   performance boost.

24                   But if you were hoping for a closer Android vs. iPhone  
25                   showdown, think again. As good as the performance is  
26                   on the Galaxy S21, the iPhone still delivers the best  
27                   smartphone performance overall.

28                   

---

<sup>3</sup> <https://www.tomsguide.com/news/samsung-galaxy-s21-benchmarks>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1           40. In a February 12, 2020 article titled *Samsung prices cheapest new*  
2 *Galaxy smartphones at \$1,000, even after Apple went lower on iPhone*,<sup>4</sup>  
3 Marketwatch writer Jon Swartz speaks to the diverging Apple and Samsung price  
4 strategies:

5  
6           Apple originally pushed the envelope by selling the  
7 iPhone X for a base price of \$1,000 starting in late 2017,  
8 but created more of a range of prices in its most recent  
9 launch of the iPhone 11. The cheapest iPhone in the latest  
10 line from Apple started at \$699, \$50 lower than the  
11 lowest-price option in Apple’s previous launch cycle.

12           Samsung appears to be headed the other way, giving all  
13 of its new Galaxy line of smartphones a \$1,000 price tag.  
14 Apple set revenue records in the holiday season thanks to  
15 the strength of its latest iPhone 11 offerings.

16           41. Since comparable iPhone devices are outperforming Samsung Devices  
17 despite Samsung’s performance manipulation, Samsung has an incentive to improve  
18 their marketed performance metrics to reclaim their competitive edge.

19           **D. Samsung Rebrands Galaxy Series with Samsung Galaxy S10**

20           42. The Company’s rebranding of its Galaxy S10 smartphone as a “ground-  
21 breaking” line<sup>5</sup> that stands apart from all other devices due to its new design,  
22 intelligent performance, and wireless power-share is manipulative due to its  
23 simultaneous introduction of the GOS application and throttling manipulation. The  
24 Samsung Galaxy S10 carried a significant price increase, with the base model of a  
25 new S9 listed at approximately \$720 when initially released and the base model of a  
26 new S10 listed at approximately \$900 when initially released. Samsung touts the

26 <sup>4</sup> <https://www.marketwatch.com/story/samsung-makes-1000-the-cheapest-price-for-galaxy-smartphones-after-apple-went-lower-on-iphone-2020-02-11>

27 <sup>5</sup> <https://news.samsung.com/us/samsung-galaxy-s10-more-screen-cameras-unpacked-2019/>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 speed and performance of this new line, even though the analogous specs are  
2 manipulative and erroneous. This harmful advertising continues with the successive  
3 Galaxy S lines.

4 43. Comparing the Samsung Galaxy S10 with the Samsung Galaxy S9 in a  
5 February 24, 2019 article titled *Samsung Galaxy S10 Vs Galaxy S9: What's The*  
6 *Difference?*,<sup>6</sup> Forbes writer Gordon Kelly utilized Samsung's published  
7 specifications to report that "Samsung deserves a lot of credit. The full Galaxy S10  
8 range is the big step-up customers wanted and they are worthy of their 10th-  
9 anniversary status."

10 44. Forbes praised the upgrades in the S10's performance and battery life.  
11 Compared to the Samsung Galaxy S9, "Samsung promises a 29% boost to CPU  
12 performance and 37% boost to the GPU (in the Samsung Galaxy S10)."  
13 Additionally, Forbes stated that "having had the same battery capacity since the  
14 Galaxy S7 in 2016, improvements were well overdue and, thankfully, Samsung has  
15 delivered them."

16 45. However, these positive reviews were based on Samsung's false and  
17 misleading benchmark scores as a result of its manipulation of the Devices' speed,  
18 performance, and battery life due to throttling.

19 46. A smartphone's speed and performance are essential to its alleged  
20 functionality. An ordinary consumer would not be able to easily discern performance  
21 deficiencies in light of Samsung's misrepresentations of the Devices' alleged  
22 superiority. Accordingly, Samsung's deliberate use of GOS to throttle non-  
23 benchmarking applications is malicious and deceitful. But for Samsung's false and  
24 misleading advertising, a reasonable consumer would not have purchased the  
25 Devices or would have paid substantially less for them.

26  
27  
28 <sup>6</sup> <https://www.forbes.com/sites/gordonkelly/2019/02/24/samsung-galaxy-s10-vs-galaxy-s9-whats-the-difference-should-i-upgrade/?sh=7a4ca6f66aa2>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1       **E. Samsung Markets the Devices’ High Performance, Speed, and Battery-**  
2       **Life**

3       47.     The U.S. smartphone market is dominated by two primary  
4 manufacturers, Apple and Samsung. Because Samsung claims that it manufactures  
5 one of the most efficient, user-friendly, and powerful smartphones, they can  
6 continue to sell the Devices and increase their prices despite misrepresented  
7 performance claims.

8       48.     Since popular smartphone blogs and websites use specifications from  
9 Samsung directly, as well as benchmarking applications that have been manipulated  
10 by Samsung’s throttling, Defendants have skewed the primary sources of  
11 information describing the Devices’ speed and performance.

12       **F. Samsung Galaxy S10**

13       49.     In a February 20, 2019, Samsung Newsroom U.S. press release titled  
14 *Samsung Raises the Bar with Galaxy S10: More Screen, Cameras and Choices*,<sup>7</sup> the  
15 Company announced the release of their “new line of premium smartphones,” the  
16 Samsung Galaxy S10, and celebrated the ten-year mark since the launch of the first  
17 Samsung Galaxy S. The press release boasts about how Samsung engineered the  
18 Samsung Galaxy S10 to “meet the distinct needs of today’s smartphone market,”  
19 which specifically refers to the Galaxy S10’s speed and gaming performance. As  
20 examples, the press release includes the following key points:

21  
22               **Speed:** Galaxy S10 gives you the capability to access  
23 next-generation Wi-Fi 6, which gives you prioritized and  
24 four times faster access over other users in crowded  
25 areas, like an airport. Experience lightning fast LTE for  
26 downloading and browsing capable of up to 2.0 Gbps for  
27 the first time ever.

28       <sup>7</sup> <https://news.samsung.com/us/samsung-galaxy-s10-more-screen-cameras-unpacked-2019/>



SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Gaming:** Engineered for the best possible gaming experience, the Galaxy S10 is built with AI-based on-device gaming performance optimization software and premium hardware including Dolby Atmos for gaming mode and a vapor chamber cooling system. Galaxy S10 is also the first mobile device to be optimized for games created on the Unity platform.

50. On the website for its Samsung Galaxy S10 line, the Company touted the device’s high performance and speed, stating that consumers can “browse at the speed of thought,” “share epic posts in a flash,” and “load sites and apps HyperFast with 5G and the Galaxy S10 5G’s supernaturally fast processor.” The website highlights the phone’s “all-day intelligent battery,” detailing its ability to “(optimize) usage based on how you live, to deliver an intuitive and energetic peak performance throughout the day.”

51. The website for the Samsung Galaxy S10 stated:

Business keeps getting faster every day and you need to be able to work anywhere—flexibly and collaboratively. With the Galaxy S10, you can do everything you need right on your phone as fast as you need to, and keep your company and personal data protected. Plus, customizable services make it easy to deploy, manage and update devices while on-the-go. Discover next generation mobile technology, productivity and security, all designed to enable next generation business to succeed.

52. Many online media outlets reflected Samsung’s resoundingly positive performance statistics.

53. In an August 12, 2020 article titled *Galaxy S10 review: Still worth it, even with the Galaxy S20 out*,<sup>8</sup> Tom’s Guide praised the Samsung Galaxy S10’s

---

<sup>8</sup> <https://www.tomsguide.com/us/samsung-galaxy-s10,review-6279.html>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 “blazing fast performance” and “Solid battery life with Wireless PowerShare” in  
2 reference to its tests using Geekbench 4’s benchmarking metrics.

3 54. In an October, 1, 2021 article titled *Samsung Galaxy S10 review:*  
4 *Finding the middle ground is hard*,<sup>9</sup> technology review website Android Authority  
5 utilized results from the 3DMark Sling Shot benchmark application to detail specific  
6 performance specs and concluded that “the Galaxy S10 is a killer phone that delivers  
7 near-perfect performance across the board.”

8 55. In an article titled *Samsung Galaxy S10 review*,<sup>10</sup> online technology  
9 news publication TechRadar stated:

The Samsung Galaxy S10 is engineered and designed to  
be a conversation-changer, a phone that’s crafted to turn  
everyone’s yearly question of “Do I really need to  
upgrade?” into a more exclamatory “I really need to  
upgrade!”

14  
15 **G. Samsung Galaxy S20**

16 56. Samsung unveiled the Samsung Galaxy S20 series in a February 12,  
17 2020 press release titled *Introducing the Samsung Galaxy S20: Change the Way You*  
18 *Experience the World*.<sup>11</sup> In the press release, Defendants’ touted the Samsung  
19 Galaxy S20’s “entertainment” and “gaming” features, all of which were directly  
20 affected by Defendant’s throttling manipulation, as follows:

**Entertainment:** Taking advantage of the Galaxy S20’s  
22 pro-grade camera, Netflix and Samsung are working  
23 together to put the Galaxy S20 in the hands of renowned  
24 directors to capture bonus content based on popular  
25 Netflix Originals. Users can also discover Netflix’s best-

26 <sup>9</sup> <https://www.androidauthority.com/samsung-galaxy-s10-review-968396/>

27 <sup>10</sup> <https://www.techradar.com/reviews/samsung-galaxy-s10>

28 <sup>11</sup> <https://news.samsung.com/global/introducing-the-samsung-galaxy-s20-change-the-way-you-experience-the-world>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

in-class content through an improved integration with Galaxy devices, enabling ease of content discovery and accessibility via Samsung Daily, Bixby, and Finder.

**Gaming:** The Galaxy S20 series takes mobile gaming to the next level. With a 120Hz display, you’ll have the ability to experience incredibly smooth gaming. Later this spring, Samsung partner, Microsoft, will launch its popular Forza Street in the Galaxy Store, marking the first time the game is coming to mobile. Combined with a fast processor, 12GB of RAM, audio tuned by AKG and a game booster working in the background to optimize settings for peak performance, the Galaxy S20 offers a powerful gaming experience.

57. News outlets responding to the launch of the Samsung Galaxy S20 reflected the misleading performance statistics of Samsung’s Devices. In a June 21, 2021 Android Authority article titled *Samsung Galaxy S20 review: What more could you want?*,<sup>12</sup> writer Robert Triggs touted the Samsung Galaxy S20’s (regular) “top-tier performance, as well as its “all-day battery life”:

As you’d expect from a modern flagship smartphone, performance is excellent even when multitasking in and out of several apps at once.

Without 5G technology on-board chugging down power, our 4G-only Samsung Galaxy S20 pushed through a full day of heavy use with capacity to spare. I couldn’t wear the phone down with two and a half hours of Spotify, an hour of YouTube, two and a half hours of web browsing, messaging, and a decent camera session thrown in. Talk about impressive.

---

<sup>12</sup> <https://www.androidauthority.com/samsung-galaxy-s20-review-1080674/>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 58. April 26, 2022 Android Authority article [titled](#) *Samsung Galaxy S20*  
2 *Ultra review: Too much of a good thing*<sup>13</sup> specifically featured the Samsung Galaxy  
3 S20 Ultra with glowing reviews—“good battery life,” “solid gaming experience,”  
4 and “blazing-fast performance”—and states the following about performance:

5  
6 The Samsung Galaxy S20 Ultra 5G is ultra-everything.  
7 While the device boasts an impressive display, rapid  
8 performance, and powerful cameras, the price tag is so  
9 high that the phone is unaffordable to many. If you need  
10 the very best Samsung phone, you’re much better off  
11 with its more powerful, more stylish, and lower-priced  
12 successor, the Galaxy S21 Ultra.

13 **H. Samsung Galaxy S21**

14 59. On January 14, 2021, Samsung revealed the new Samsung Galaxy S21  
15 in a press release titled *Samsung Galaxy S21 Ultra: The Ultimate Smartphone*  
16 *Experience, Designed To Be Epic In Every Way*, advertising the phone as “a flagship  
17 that pushes the boundaries of what a smartphone can do.” Defendants advertised the  
18 Samsung Galaxy S21 as having “Performance and Protection You Can Count On.”  
19 Samsung’s press release explained that the Samsung Galaxy S21’s new chip “offers  
20 faster speed, advanced computing and greater energy efficiency.”

21 60. On the website for its Samsung Galaxy S21, which was officially  
22 released on January 29, 2021, the Company continued to tout features related to the  
23 smartphone’s speed, battery life, and overall performance. The website for the  
24 Samsung Galaxy S21 stated:

25 Packing more speed, power and intelligence than ever,  
26 the 5nm processor is fast enough to keep up with the  
27 action, so you can do more even faster.

28 <sup>13</sup> <https://www.androidauthority.com/samsung-galaxy-s20-ultra-review-1085702/>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Witness the fastest chip ever in a Galaxy. With a 5nm processor on board, you get seamless multitasking and a hyper-fast content streaming.

61. Online reviews for the Samsung Galaxy S21 continued to mirror the manipulated benchmarking applications statistics.

62. In a January 29, 2021 article titled *Samsung Galaxy S21 review: A premium phone that’s a great value*,<sup>14</sup> PCWorld touted the S21’s “great performance and battery life.” The article noted that “year-over-year improvement(s)” “matter less if you’re coming from an S20 or even an S10, but upgrading from an S8 will be a noticeable improvement.”

63. In a May 4, 2022 article,<sup>15</sup> Expertreview.co.uk noted the Samsung Galaxy S21’s “substantial performance uplift,” detailing “50% faster multi-core processing speeds when compared against last year’s Galaxy S20 in the Geekbench 5 benchmark.”

64. In the “Buy it if” section, Tech Radar stated:<sup>16</sup>

**(Buy it if...) You need one of the most powerful Android phones**

The Galaxy S21 offers some phenomenally good performance, and if you need a smartphone that can handle multiple tasks at once in split-screen view or when gaming this will likely be it.

**I. Samsung Galaxy S22**

65. Samsung unveiled the Samsung Galaxy S22 series in a February 10, 2022 press release titled *Introducing the New Samsung Galaxy S22 and S22+*

---

<sup>14</sup> <https://www.pcworld.com/article/393998/samsung-galaxy-s21-review.html>

<sup>15</sup> <https://www.expertreviews.co.uk/samsung/1413129/samsung-galaxy-s21-review>

<sup>16</sup> <https://www.techradar.com/reviews/samsung-galaxy-s21-review>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 *Deliver Revolutionary Camera Experiences, Day and Night.*<sup>17</sup> In the press release,  
2 Defendant’s touted the Samsung Galaxy S20’s “Power and Performance That Keep  
3 Up With Your Life.” The press release stated:

4  
5 From work to home, Galaxy S22 and S22+ are designed  
6 to power you through even the busiest days with the first-  
7 ever 4nm processor on a Galaxy smartphone. It powers  
8 our most advanced AI and ML processing to date,  
9 delivering unrivaled performance for all your streaming  
10 and productivity needs. What’s more, network behavior  
11 analysis streamlines your app performance by  
12 automatically detecting which app you’re using and  
13 directing the most power there — so streaming, surfing  
14 the web, and navigating apps have never been smoother.

15 A lightning-fast processor demands power that can keep  
16 pace. Galaxy S22 is built with a robust all-day battery  
17 and 25W fast charging that never slows you down, and  
18 Galaxy S22+ features a super powerful battery that can  
19 last even longer than a day on a single charge. Galaxy  
20 S22+ also offers 45W super-fast charging, so you don’t  
21 have to wait when your power is running low.

22 66. On the website for its Samsung Galaxy S22, which was released on  
23 February 25, 2022, the Company marketed the smartphone as “breaks the rules with:  
24 nightography camera, ready for anything all-day battery, our fastest processor ever.”  
25 The website details key features regarding its streaming and processing speed, as  
26 follows:

27 **Google Duo Live Sharing for virtual watch parties**  
28 Bring the crew together with Google Duo\*. There, you  
can watch movies together\*\* — streaming high-quality  
video just like IRL\*\*\*.

---

<sup>17</sup> <https://news.samsung.com/global/new-samsung-galaxy-s22-and-s22-plus-deliver-revolutionary-camera-experiences-day-and-night>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**4nm processor, our fastest chip yet**

Our fastest, most powerful chip ever. That means, a faster CPU and GPU compared to Galaxy S21 Ultra. It’s an epic leap for smartphone technology.

67. In a Tom’s Guide article,<sup>18</sup> published on June 1, 2022, the author referenced the S22’s “solid performance.”

68. A June 20, 2022 Android Authority article, titled *Samsung Galaxy S22 review: The best, in a small package*,<sup>19</sup> also praised the S22’s performance and design, stating:

Samsung might have hit the sweet spot for the Galaxy S22. It’s certainly not too big, but it’s not too small, either. This is a flagship-tier handset you can use one-handed without sacrificing build quality, the cameras, or raw performance. It feels like an excellent counterpunch to Apple’s domination among six-inch flagships; certainly more so than the Galaxy S21 did, thanks to the premium upgrades. Even if the Samsung Galaxy S22 hasn’t changed the smartphone game, it’s a reassuring sign that smaller Android flagships still have a chance.

**CLASS ACTION ALLEGATIONS**

69. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and a proposed Class defined as follows:

All persons who purchased a Samsung Device containing the GOS application in the State of California and did not agree to or opted out of binding arbitration (the “Class”).

<sup>18</sup> <https://www.tomsguide.com/reviews/samsung-galaxy-s22>

<sup>19</sup> <https://www.androidauthority.com/samsung-galaxy-s22-review-3123026/>

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1           70. **Numerosity Under Rule 23(a)(1).** The Class is so numerous that the  
2 individual joinder of all members is impracticable, and the disposition of the claims  
3 of all Class members in a single action will provide substantial benefits to the parties  
4 and the Court. Plaintiff, on information and belief, alleges that the Class includes  
5 millions of persons.

6           71. **Commonality Under Rule 23(a)(2).** Common legal and factual  
7 questions exist that predominate over any questions affecting only individual  
8 members. These common questions, which do not vary among Class members and  
9 which may be determined without reference to any Class member’s individual  
10 circumstances, include, but are not limited to:

11           a) Whether Samsung knew or should have known that the  
12 performance of the Devices was intentionally being throttling through the GOS app;

13           b) Whether Samsung’s representations and omissions in advertising  
14 and/or labeling are false, deceptive, and misleading;

15           c) Whether Samsung had knowledge that its representations and  
16 omissions in advertising and/or labeling are false, deceptive, and misleading;

17           d) Whether Samsung’s representations and omissions in advertising  
18 and/or labeling are likely to deceive a reasonable consumer;

19           e) Whether Samsung knew or should have known that consumers  
20 rely on review websites for their purchasing decisions, which in turn rely on  
21 benchmarking applications to rate and describe smartphones;

22           f) Whether Samsung engaged in unlawful, fraudulent, or unfair  
23 business practices;

24           g) Whether Samsung has violated the Unfair Competition Law  
25 (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*;

26           h) Whether Samsung has violated the Consumers Legal Remedies  
27 Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*;



1           i)       Whether, because of Samsung’s omissions and/or  
2 misrepresentations of material facts, Plaintiff and members of the Class have  
3 suffered an ascertainable loss of monies and/or property and/or value; and

4           j)       Whether Plaintiff and members of the Class are entitled to  
5 declaratory and injunctive relief.

6           72.    *Typicality Under Rule 23(a)(3)*. Plaintiff’s claims are typical of the  
7 Class members’ claims. Samsung’s course of conduct caused Plaintiff and Class  
8 members the same harm, damages, and losses as a result of Samsung’s unlawful  
9 conduct. Likewise, Plaintiff and other Class members must prove the same facts in  
10 order to establish the same claims.

11           73.    *Adequacy of Representation Under Rule 23(a)(4)*. Plaintiff is an  
12 adequate Class representative because she is a member of the Class, and her interests  
13 do not conflict with the interests of the Class. Plaintiff has retained counsel  
14 competent and experienced in complex litigation and consumer protection class  
15 action matters such as this action, and Plaintiff and her counsel intend to prosecute  
16 this action for the Class benefit and have the resources to do so. Plaintiff and her  
17 counsel have no interests adverse to those of the other members of the Class.

18           74.    *Superiority*. The Class can be properly maintained because the above  
19 common questions of law and fact predominate over any questions affecting  
20 individual Class members. A class action is also superior to all other available  
21 methods for the fair and efficient adjudication of this controversy because individual  
22 litigation of each Class member’s claim is impracticable. Even if each Class member  
23 could afford individual litigation, the court system could not. It would be unduly  
24 burdensome if thousands of individual cases proceeded. Individual litigation also  
25 presents the potential for inconsistent or contradictory judgments, the prospect of a  
26 race to the courthouse, and the risk of an inequitable allocation of recovery among  
27 those individuals with equally meritorious claims. Individual litigation would  
28 increase the expense and delay to all parties and the Courts because it requires

1 individual resolution of common legal and factual questions. By contrast, the class  
2 action device presents far fewer management difficulties and provides the benefit of  
3 a single adjudication, economies of scale, and comprehensive supervision by a single  
4 court.

5 **FIRST CLAIM FOR RELIEF**

6 **Violations of the California Unfair Competition Law**

7 **CAL. BUS. & PROF. CODE § 17200, *et seq.***

8 ***On Behalf of Plaintiff Martin and the Class***

9 75. Plaintiff Martin, individually and on behalf of the Class, incorporates by  
10 reference all the allegations contained in the preceding paragraphs of this Class  
11 Action Complaint as if fully set forth herein.

12 76. Plaintiff Martin brings this claim individually and on behalf of the Class  
13 against Samsung.

14 77. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof.  
15 Code §§ 17200, *et seq.*, is a California-specific unfair competition statute that  
16 protects consumers against unlawful, unfair, misleading, and fraudulent business and  
17 advertising practices.

18 78. Samsung’s actions as alleged herein constitute an “unlawful” practice  
19 within the definition, meaning, and construction of California’s UCL because  
20 Samsung violated California’s strong consumer protection and false advertising  
21 legislation, including California’s False Advertising Law (Bus. & Prof. Code  
22 §§ 17500 *et seq.*) and the CLRA (Civ. Code §§ 1750, *et seq.*).

23 79. Samsung violated the UCL by utilizing unfair, deceptive, and  
24 fraudulent business and marketing practices.

25 80. Samsung’s “unfair” business practices include:

- 26 • Intentionally utilizing GOS to throttle the performance of 10,000  
27 applications, while not throttling the performance popular benchmarking  
28 apps;

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

- 1 • Utilizing the false statistics garnered from the non-throttled benchmarking
- 2 to market the Devices as superior in speed and performance; and
- 3 • Concealing this material GOS throttling information from website
- 4 reviewers and consumers so that consumers were unable to make informed
- 5 purchasing decisions.

6 81. Samsung’s actions as alleged herein constitute a “fraudulent” practice  
 7 because, by utilizing false and misleading statistics to market the Devices alleged  
 8 speed and performance, Samsung’s conduct was likely to deceive, and did deceive,  
 9 consumers. Samsung’s failure to disclose GOS throttling constitutes a material  
 10 omission in violation of the UCL.

11 82. As a result of Samsung’s unlawful, fraudulent, and unfair conduct,  
 12 Plaintiff Martin and the Class received an inferior product from that which they were  
 13 promised. Had Samsung disclosed to Plaintiff Martin and the Class that it was  
 14 throttling the performance of the Devices to manipulate purchasers into purchasing  
 15 expensive products that did not in fact function at its claimed superior speed, battery  
 16 life, and overall performance, Plaintiff Martin and the Class would not have  
 17 purchased the Devices or would have paid less.

18 83. Samsung’s deceitful business practices constitute unfair competition.  
 19 Plaintiff Martin and the Class seek equitable relief and restitution to remedy  
 20 Samsung’s deceptive marketing and advertising.

21 **SECOND CLAIM FOR RELIEF**

22 **Violations of the Consumer Legal Remedies Act**

23 **CAL. CIV. CODE § 1750, et seq.**

24 ***On Behalf of Plaintiff Martin and the Class***

25 84. Plaintiff Martin, individually and on behalf of the Class, incorporates by  
 26 reference all the allegations contained in the preceding paragraphs of this Class  
 27 Action Complaint as if fully set forth herein.

28

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 85. Plaintiff Martin brings this claim individually and on behalf of the Class  
2 against Samsung.

3 86. The Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code  
4 §§ 1750 *et seq.*, is a statute enacted to protect consumers involved in a transaction  
5 which results in the sale or lease of goods, property, or services against unfair and  
6 deceptive business practices.

7 87. Samsung is a “person” under Cal. Civ. Code § 1761(c).

8 88. Plaintiff Martin and the Class are “consumers” as defined by *Cal. Civ.*  
9 *Code § 1761(d)*.

10 89. In violation of Cal. Civ. Code §§ 1750 *et seq.*, Samsung has engaged in  
11 unfair and deceptive business practices by (a) advertising the Devices with the intent  
12 not to sell them as advertised; (b) representing that the Devices had characteristics,  
13 uses, benefits, and qualities which they do not have; and (c) representing that the  
14 Devices are of a particular standard, quality, and grade when they are not.

15 90. Samsung violated the CLRA by:

- 16 • Misrepresenting to Plaintiff Martin and the Class that Samsung’s Devices  
17 had characteristics, uses, and benefits that they did not have, in violation of  
18 Cal. Civ. Code § 1770(a)(5);
- 19 • Representing to Plaintiff Martin and the Class that the Devices were of a  
20 particular standard, quality, or grade, when they were of another in  
21 violation of Cal. Civ. Code § 1770(a)(7);
- 22 • Advertising goods to Plaintiff Martin and the Class with the intent not to  
23 sell them as advertised, in violation of Cal. Civ. Code § 1770(a)(9);
- 24 • Manipulating the Devices performance statistics by intentionally not  
25 throttling popular benchmarking applications;
- 26 • Representing that the Devices speed and performance is equivalent to that  
27 of its non-throttled benchmarking applications, which far exceeded the  
28 performance of throttled applications; and

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 • Misrepresenting to Plaintiff Martin and the Class that the Devices operated  
2 at their marketed speed and performance.

3 91. Samsung intentionally provided Plaintiff Martin and the Class with  
4 manipulated performance representations, deceiving these reasonable consumers.

5 92. Additionally, Samsung took advantage of Plaintiff Martin and the  
6 Class's lack of experience and knowledge necessary to detect differences in  
7 technical specifications.

8 93. Samsung had a duty to disclose its manipulative throttling practices  
9 under the CLRA due to its partial representations about the Devices' speed and  
10 performance and its exclusive knowledge of material facts about the Devices true  
11 speed and performance, which it concealed from the Plaintiff.

12 94. Due to Samsung's misrepresentations and omissions, Plaintiff Martin  
13 and the Class received an inferior product from that which they were promised. Had  
14 Samsung disclosed to Plaintiff Martin and the Class that it was throttling the  
15 performance of the Devices to manipulate consumers into buying expensive  
16 products that did not in fact function at their claimed superior speed, battery life, and  
17 overall performance, Plaintiff Martin and the Class would not have purchased the  
18 Devices or would have paid less for them.

19 95. Plaintiff Martin and the Class relied on Samsung's misrepresentations  
20 and omissions in purchasing the Devices.

21 96. Plaintiff Martin, individually and on behalf of the Class, demands  
22 judgment against Samsung under the CLRA for injunctive relief.

23 97. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff Martin will serve  
24 Samsung with notice of its alleged violations of the CLRA by certified mail return-  
25 receipt requested. If, within thirty days after the date of such notification, Samsung  
26 fails to provide appropriate relief for its violations of the CLRA, Plaintiff Martin  
27 reserves her right to amend this Class Action Complaint to seek monetary damages  
28 under the CLRA.

1 98. Notwithstanding any other statements in this Class Action Complaint,  
2 Plaintiff Martin does not seek monetary damages in connection with her CLRA  
3 claim and will not do so until the applicable thirty-day period has passed.

4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that the  
7 Court order the following relief and enter judgment against Samsung as follows:

- 8 A. An Order certifying the proposed Class under Fed. R. Civ. Proc. 23;
- 9 B. An Order appointing Plaintiff to represent the Class;
- 10 C. A declaration that Samsung engaged in the illegal conduct alleged  
11 herein;
- 12 D. An Order that Samsung be permanently enjoined from its improper  
13 activities and conduct described herein;
- 14 E. A Judgment awarding Plaintiff and the Class restitution and  
15 disgorgement of all compensation obtained by Samsung from its  
16 wrongful conduct;
- 17 F. Prejudgment and post-judgment interest at the maximum allowable rate;
- 18 G. An Order awarding Plaintiff and the Class reasonable litigation  
19 expenses, costs, and attorneys' fees;
- 20 H. An Order awarding such other injunctive and declaratory relief as is  
21 necessary to protect the interests of Plaintiff and the Class; and
- 22 I. An Order awarding such other and further relief as the Court deems  
23 necessary, just, and proper.

24  
25 **JURY DEMAND**

26 Plaintiffs hereby demand a trial by jury for all claims and issues so triable.  
27  
28

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 12, 2022

SCHUBERT JONCKHEER & KOLBE LLP

/s/ Amber L. Schubert

AMBER L. SCHUBERT (S.B.N. 278696)

ROBERT C. SCHUBERT (S.B.N. 62684)

**SCHUBERT JONCKHEER & KOLBE  
LLP**

Three Embarcadero Center, Suite 1650

San Francisco, California 94111

Telephone: (415) 788-4220

Facsimile: (415) 788-0161

E-mail: rschubert@sjk.law

aschubert@sjk.law

*Counsel for Plaintiff Martin*