

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS****CASE No.**

Jacqueline Shepherd, on behalf of herself and all  
others similarly situated,

Plaintiff,

vs.

Google LLC, Bungie, Inc., and id Software LLC,

Defendants.

**COMPLAINT**

Plaintiff Jacqueline Shepherd (“Plaintiff”), by and through her undersigned counsel, upon personal knowledge as to herself and upon information and belief as to all other matters, allege as follows:

1. Plaintiff brings this action against defendants Google LLC (“Google”), Bungie, Inc., and id Software LLC, (collectively “Defendants”), on behalf of herself and all other similarly situated individuals and entities who purchased Google Stadia, during the period between June 6, 2019, and the date of the final disposition of this action (as defined below, the “Class”), based on information and/or reports that Google Stadia was more powerful than Xbox-One X and Playstation Pro 4 and all games on the Google Stadia platform would be playable at 4k resolution.

### SUMMARY

2. This is a class action against Google, Bungie, Inc., and id Software LLC for unfair and deceptive trade practices concerning the advertised display quality and resolution of video games distributed by Google Stadia, a cloud video gaming service developed and operated by Google.

3. On March 19, 2019, Google Chief Executive Officer (“CEO”) Sundar Pichai announced Stadia, which is Google’s entry into the video game streaming market. During the presentation of Stadia, Google claimed that Stadia is more powerful than both Xbox One X and Playstation 4 Pro combined, which are the leading video game platforms provided by Microsoft Corporation and Sony Corporation that provide ultra fast, high quality, 4k 60 frames per second (“FPS”) resolution gaming.

4. Although Google’s streaming service would not be available until November 2019, to cause consumers to purchase the service in advance, on June 6, 2019, Google announced the pre-order sale of the Stadia Founder’s Edition for \$129, which included a Stadia game controller, a Google Chromecast Ultra (required to play Stadia games at 4k), three months of the Stadia service, and a “Stadia Buddy Pass”, which allows the purchaser to gift three months of Stadia to a friend. Google incorrectly claimed that the value of the Stadia Founder’s package was \$300.

5. On October 8, 2019, Phil Harrison, Vice President and General Manager for Google, and the product manager of Stadia, announced that all of the video games on the Google Stadia platform would support 4k resolution at launch, which is the highest

resolution offered by competing gaming platforms, including Microsoft's Xbox and Sony's Playstation 4.

6. Shortly thereafter, media reports surfaced across the United States and the world, stating that every Google Stadia game, even older games, would be available to play at 4k resolution. Google did not correct the false information contained in said reports.

7. On October 22, 2019, Google announced that the Stadia Founder's edition was sold out, but that consumers can purchase the Stadia Premier Edition, which included the items included in the Stadia Founder's Edition, less the Stadia Buddy Pass.

8. Plaintiff, like numerous other consumers, purchased Google Stadia's Premiere Edition for \$129 based on information and reports contained online that Stadia was more powerful than the leading gaming consoles and would display all games at 4k resolution.

9. Shortly after Plaintiff purchased Google Stadia's Premiere Edition, media reports began to surface claiming that Google is exaggerating the streaming quality and display resolution of Google Stadia's service, and that many of the games offered by Google did not have the 4k resolution advertised by Google.

10. Upon learning of the misrepresentations by Google, Plaintiff retained counsel and sent a letter to Google, on behalf of herself and all others similarly situated, notifying Google of the claims alleged in this lawsuit, and respectfully requested that Google resolve the claims. *See* Exhibit A attached hereto. Google has failed to resolve

the claims. Further, Google has not disclosed the resolution of the games that it sells through Stadia, and hides the information from the public.

11. After months of settlement negotiations, Google provided Stadia subscribers, including former subscribers, an automatic \$10 coupon to be applied towards the purchase of a game on Stadia. Plaintiff attempted to resolve the matter through a private and confidential individual only settlement based on the \$10 coupon provided by Google, but Google refused to provide Plaintiff fair and reasonable legal fees. The legal fees offered by Google amounted to a small percentage of the time that Plaintiff's counsel spent on this matter.

12. Accordingly, Plaintiff was forced to file this lawsuit.

13. Plaintiff, on behalf of herself and all others similarly-situated, seek 1) monetary damages fully compensating all individuals and entities for their purchase price of Google Stadia and/or any damages incurred as a result of the purchase; 2) injunctive relief requiring Google to display for public viewing the resolution and frames per second of each game sold on the Google Stadia service; and 3) such other relief as the Court deems necessary and appropriate.

### **THE PARTIES**

14. Plaintiff Jacqueline Shepherd is a citizen of the State of New York. On November 23, 2019, Plaintiff purchased Google Stadia's Premier Edition based on the misleading statements alleged herein.

15. Defendant Google LLC, referred to herein as Google, is a Delaware corporation with corporate headquarters in Mountain View, California, in Santa Clara

County. Google is an American multinational technology company that specializes in Internet-related services and products, which include online advertising technologies, a search engine, cloud computing, software, and hardware. It is considered one of the Big Four technology companies, alongside Amazon, Apple, and Microsoft.

16. Defendant Bungie, Inc. (“Bungie”), a Delaware Corporation, is an American video game developer based in Kirkland, Washington, USA. Microsoft acquired Bungie in 2000, and Bungie’s then-current project, the first-person shooter Halo: Combat Evolved, was repurposed into a launch title for Microsoft’s new Xbox console. Halo went on to become Xbox’s “killer application”, selling millions of copies and spawning a billion dollar franchise. On October 5, 2007, Bungie announced that it had split with Microsoft and became a privately held independent company. In 2010, Bungie signed a ten-year publishing deal with Activision Blizzard. In January 2019, Bungie announced it was ending the partnership with Activision Blizzard, and would take over publishing for Destiny.

17. Defendant id Software, LLC (“id Software”), a Delaware LLC, is an American video game developer based in Dallas, Texas. The company was founded on February 1, 1991. id Software made important technological developments in video game technologies for the PC (running MS-DOS and Windows), including work done for the Wolfenstein, Doom, and Quake franchises. The company’s work was particularly important in 3D computer graphics technology and in game engines that are used throughout the video game industry. The company was involved in the creation of the first-person shooter (FPS) genre. Wolfenstein 3D is often considered to be the first true

FPS, and Doom is a game that popularized the genre and PC gaming in general. On June 24, 2009, ZeniMax Media acquired id Software.

### **JURISDICTION AND VENUE**

18. This Court has jurisdiction over this action. Plaintiff is a citizen of the State of New York, Queens County, and Defendants are citizens of the State of Delaware and are headquartered in California, Texas, and/or Washington. The matter in controversy exceeds the sum or value of \$1,000,000, exclusive of interest and costs, and this is a class action in which the number of members of the proposed class is not less than 100.

19. Venue is proper in the state of New York, Queens County. A substantial part of the events or omissions giving rise to Plaintiff's claims were distributed in this county. Also, Defendants have used the laws within, and have done substantial business in, this county in that it has promoted, marketed, distributed, and sold the products at issue in this county. Finally, there is personal jurisdiction over Defendants in this county.

### **FACTUAL ALLEGATIONS**

#### **I. Google Announces Stadia and Regularly Misrepresents the Quality and Value of the Service to Deceptively Raise Revenue, Build a Consumer Base for the Service, and Beta Test the Service on UnSuspecting Customers Prior to the Launch of a Free Stadia Service**

##### **1. The Introduction of Google Stadia and Google Misleadingly Claims That Stadia Will Outperform the Xbox One X and Playstation 4 Pro**

20. On March 19, 2019, at the GDC Game Developers Conference in San Francisco, California, Google CEO Sundar Pichai announced Stadia, which is Google's entry into the video game streaming market.

21. Google Stadia is a video game subscription service that does not require a console and allows customers to stream games from the internet to multiple screens, including their television, laptop, tablet, or smartphone.

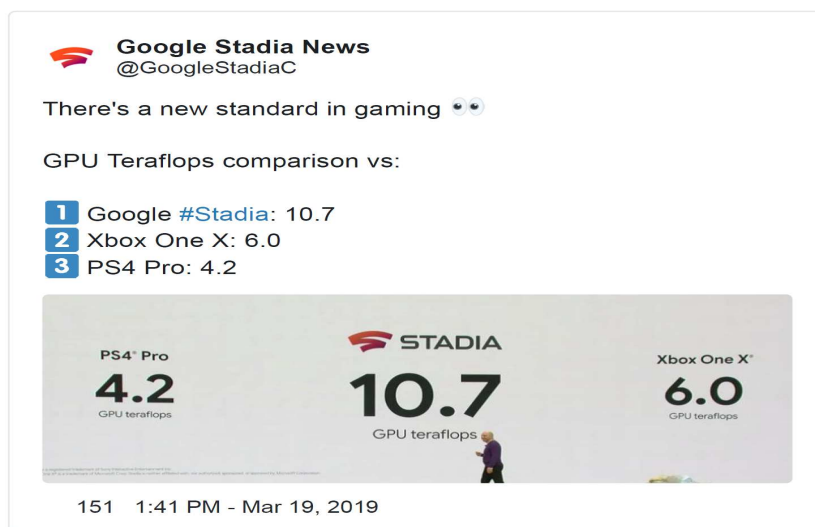
22. Although Stadia does not require a console or hardware to play Stadia games on laptops, tablets, or smartphones, a Google Chromecast Ultra and gaming controller is required to play games on a television.

23. Further, because Google Stadia streams games over the internet as opposed to downloading games to consoles, a high speed internet connection is required to play Google Stadia.

24. Moreover, customer's that have data caps or limitations on the amount of data that can be downloaded from internet service providers, may not be able to play Stadia without incurring additional and potentially substantial fees for data.

25. During the announcement presentation of Stadia, Google claimed that Stadia is more powerful than both Xbox One X and Playstation 4 Pro combined, which are competing video game platforms provided by Microsoft Corporation and Sony Corporation that provide gameplay up to 4k 60 FPS resolution.

26. The following tweet was posted on Twitter:



27. At the GDC Game Developers Conference, Marty Stratton, Executive Producer for defendant id Software LLC, announced that the major AAA video game title Doom Eternal would be released on Stadia at 4k resolution with HDR and playable at 60 frames per second (“FPS”):



See <https://www.youtube.com/DoomStadia> (relevant portion located at 30:11 in the video).

28. id Software also announced on Twitter that Doom Eternal was coming to Stadia at 4k 60 FPS resolution:



See <https://twitter.com/DOOM/status/1108059651990605824>.

29. Google's claim that Stadia was more powerful than Xbox One and Playstation 4 Pro and id Software's claim that Doom would be playable at 4k resolution

at 60 FPS was widely reported by media outlets in news reports and articles across the United States and the world.

30. For example, on March 21, 2019, an article on CNET titled “Google Stadia puts Xbox One, PlayStation 4 and PC gaming on notice” stated “Already, Google said, Stadia is able to deliver games with more performance than Microsoft’s Xbox One X and Sony’s PlayStation 4 Pro combined. And Google said it eventually expects to double that performance as game developers create even more complex games.” See <https://www.cnet.com/news/google-stadia-puts-xbox-one-playstation-4-and-pc-gaming-on-notice/>.

31. In an article titled “Google Stadia promises ‘Doom: Eternal’, teases ‘NBA 2K19’, ‘Tomb Raider’, more at GDC”, and published by 9to5Google on March 19, 2019, the author stated “Marty Stratton of id Software was on stage with Google today to talk about their partnership to bring their upcoming title Doom: Eternal to Stadia in full 4K at 60 frames per second. According to Stratton, the process was simple as they were already familiar with the Vulkan APIs used by Stadia to optimize gameplay on the platform’s Linux hardware.” See <https://9to5google.com/2019/03/19/google-stadia-doom>.

32. Further, an article published on IGN, one of the largest video game media outlets, on March 19, 2019, titled “What Are Teraflops, and What Do They Tell Us About Google’s Stadia Performance?”, stated: “So while 10.7 teraflops is certainly impressive, don’t put too much stock in these numbers. Playing a game on Stadia isn’t going to look twice as good as it would on a PlayStation 4 Pro, but we can glean that it’ll probably look and perform better—probably somewhere in the ballpark of a high-end gaming PC, much

like other similar streaming services—and that’s a pretty exciting prospect, provided Google can keep latency as low as they promise.” See

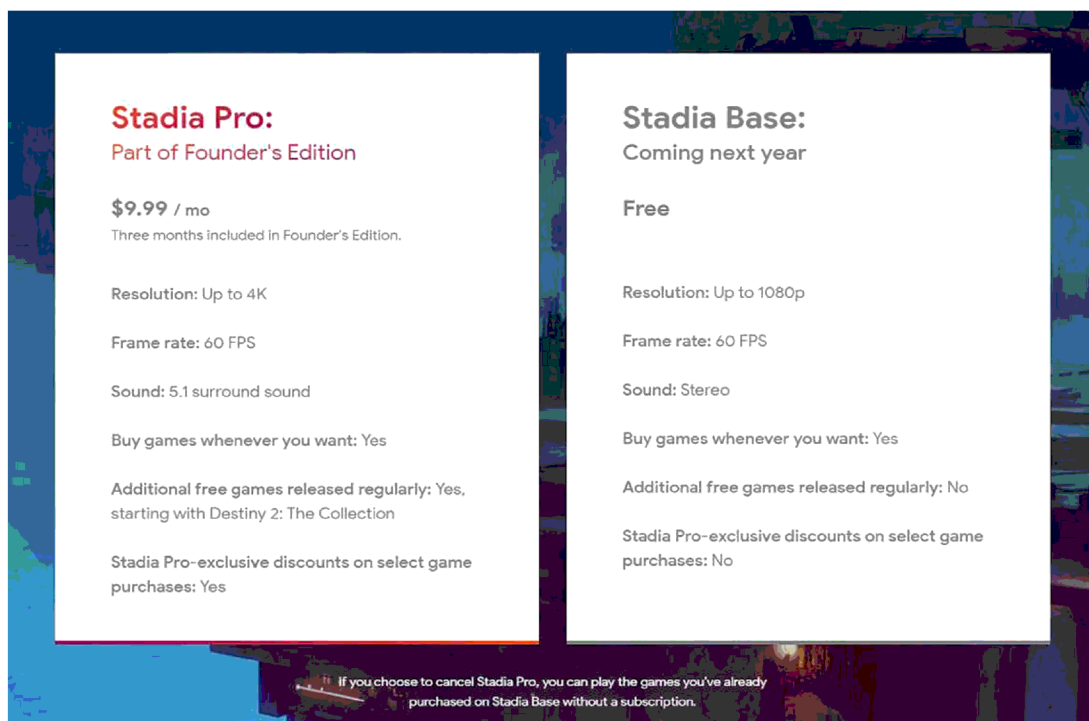
<https://www.ign.com/articles/2019/03/19>.

**2. Google Announces the Details of the Stadia Subscription Service and Announces the Sale of the Stadia Founder’s Edition and the Stadia Premier Edition**

33. On June 6, 2019, Google announced additional details of the Stadia video game service.

34. Google announced that there would be two tiers of service available for Stadia Gaming -- Stadia Pro and Stadia Base.

35. The differences between Stadia Pro and Stadia Base were advertised as follows:



36. Google claimed that, for \$9.99 per month, the Stadia Pro subscription provided the following additional benefits to the free Stadia Base subscription: 1) the ability to play games in 4k resolution; 2) the ability to purchase games through the Stadia store at a discount; and 3) the ability to play free games released regularly on the service, starting with Destiny 2: The Collection, developed and published by defendant Bungie, Inc..

37. The Stadia Pro service was scheduled to be released in November 2019, and the free Stadia Base service would not be available to the public until “next year”.

38. Although Google’s Stadia Pro would not be available until November 2019, to cause consumers to purchase the service in advance, on June 6, 2019, Google announced the pre-order sale of the Stadia Founder’s Edition.

39. The Stadia Founder’s Edition included a Stadia game controller, a Google Chromecast Ultra (then required to play Stadia at 4k resolution), three months of the Stadia Pro service, and a “Stadia Buddy Pass”, which allows the purchaser to gift three months of Stadia to someone else, for \$129. Google wrongfully claimed that the value of the Stadia Founder’s package was \$300.

40. Google posted the following tweet announcing the Stadia Founder's Edition:



See <https://twitter.com/GoogleStadia/status/1136670139586400257>

41. Said details of the Stadia service, including that 4k gaming was only available on the \$9.99 monthly Stadia Pro tier of the service, were widely reported by the media across the United States and the world.

42. For example, on June 9, 2019, 9to5Google published an article titled “Google Stadia Pro explained: Less the Netflix model, more like PlayStation Plus” that stated “[t]he other big benefit of Stadia Pro and its pricing model is better quality. Google offers up 4K HDR quality at 60fps with 5.1 Surround Sound as well.” See <https://9to5google.com/2019/06/09/google-stadia-pro-pricing-explained/>.

43. On October 8, 2019, defendant id Software LLC announced that Doom Eternal, which was previously promised to be rendered in 4k 60 FPS, would be delayed until March 20, 2020.

44. On October 8, 2019, Phil Harrison, Vice President and General Manager for Google, and the product manager of Stadia, announced that all of the video games on the Google Stadia platform would support 4k resolution at launch, which is the highest resolution offered by leading gaming platforms, including Microsoft's Xbox and Sony's Playstation 4.

45. The true and correct copy of the tweet from Phil Harrison is as follows:



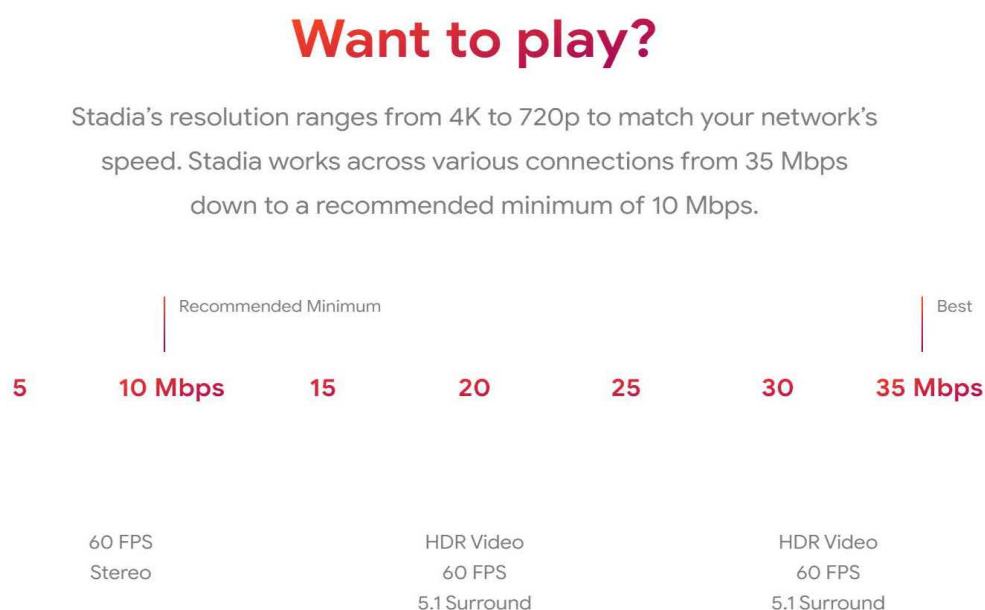
See <https://twitter.com/MrPhilHarrison/status/1181739544783097858>

46. Shortly after Mr. Harrison's statement, media reports and articles were widely circulated across the United States and the world, stating that every Google Stadia

game, even older games, would be available to play at 4k resolution. Google did not correct the false information contained in said reports.

47. For example, an article titled “All Google Stadia games will be playable in 4K at 60fps, here’s what it means” that was published by Android Authority on October 11, 2019, stated “Stadia head Phil Harrison confirmed on Twitter that as long your internet connection and TV are capable of supporting 4K and 60fps streaming, you will be able to enjoy **all Stadia games** in at an ultra-high resolution with silky smooth frame rates.” See <https://www.androidauthority.com/google-stadia-4k-60fps-1039729/>.

48. During the time that Google was leading the marketplace to believe that Stadia was the most powerful gaming experience and that all games would play at 4k resolution, according to the WayBackMachine located at <https://archive.org/web/>, Google stated the following on the Google Store website, located at [https://store.google.com/product/stadia\\_learn](https://store.google.com/product/stadia_learn):



49. The above statement from Google made it appear that the Stadia service only offered resolution quality lower than 4k if a customer had a slow internet connection.

50. On October 16, 2019, Google announced on Twitter that a major AAA video game title being released on Stadia, Red Dead Redemption 2, would be available on Stadia in “glorious detail in 4k/60FPS.” Google later deleted said Twitter announcement after realizing that it was a clear false statement that will cause problems once the service is released and consumers start to learn that Red Dead Redemption 2 did not play at 4k/60 FPS.

51. Although Google deleted said tweet, the following copy of the tweet has been located on the internet:

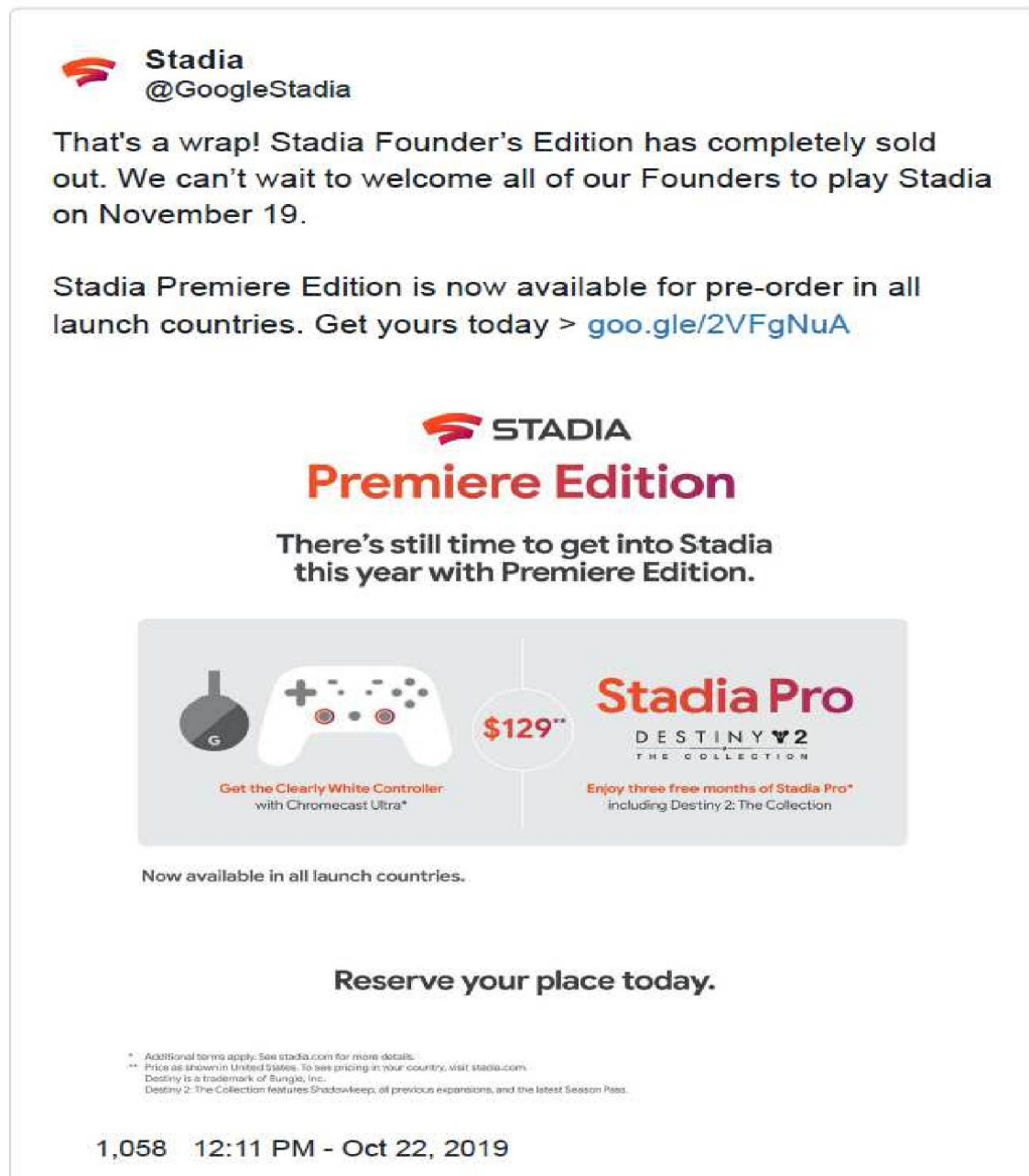


See <https://imgur.com/ZFQOK1q>.

52. Google's action here in deleting said tweet shows that Google understood that it was intentionally misleading consumers and wanted to assure there were no direct false statements coming from Google regarding the Stadia service.

53. On October 22, 2019, to further cause unsuspecting consumers to purchase Google Stadia in advance of the launch of the service, Google announced that the Stadia Founder's Edition was sold out, but that consumers can purchase the Stadia Premier Edition, which included all of the material items found in the Stadia Founder's Edition, less the Stadia Buddy Pass.

54. The following tweet was posted by Google announcing that Stadia Founder's Edition was sold out and stating "There's still time to get into Stadia this year with Premier Edition":

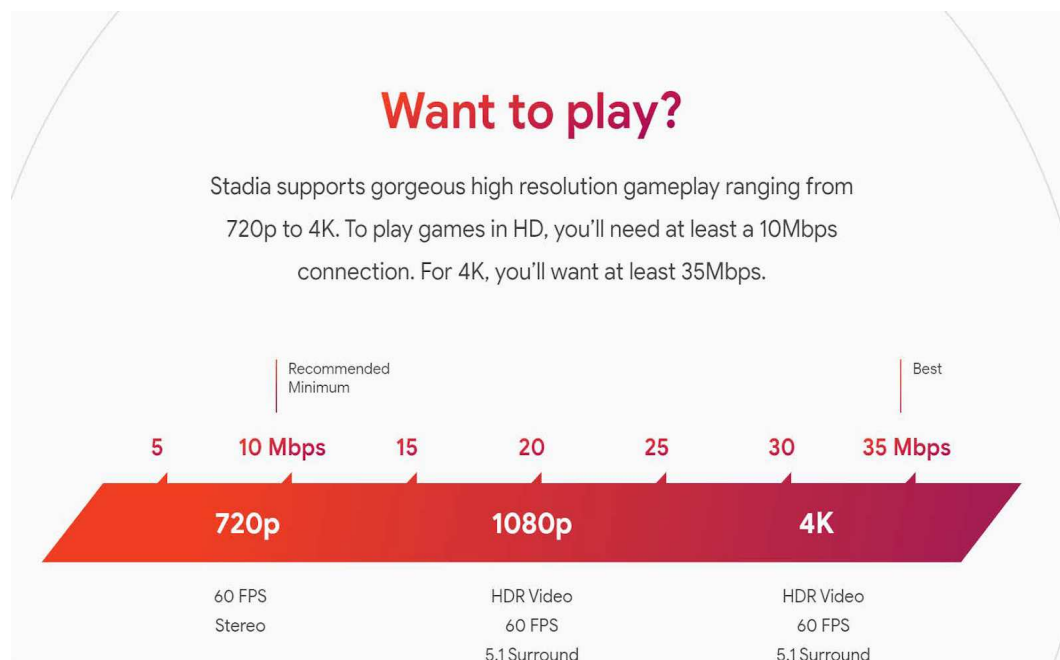


55. Thereafter, the media widely reported that the Stadia Founder's Edition was sold out and that if consumers wanted to play 4k games on Google Stadia this year they would have to buy the Stadia Premier Edition.

56. For example, an article titled "Google sells out of Stadia Founder's Edition in all 14 launch countries", and published on 9to5Google on October 22, 2019, stated "In place of the Founder's Edition is Premiere Edition, which still provides early access: 'There's still time to get into Stadia this year with Premiere Edition.'" See <https://9to5google.com/2019/10/22/stadia-founders-edition/>.

57. Just prior to the launch, in an apparent effort to cover up the incorrect information that would soon come to light concerning the power of Stadia and the ability to play all games at 4k, which Google caused to be widely circulated and reported throughout the United States and the world, Google made a change to a description of the resolution of the service that Stadia provided depending upon a customer's internet connection.

58. A few days before the launch of the service on November 19, 2019, according to the WayBackMachine, Google quietly changed the About section on the Stadia website to obscure the indication that Stadia gameplay was less than 4k only if a customer had a slower internet connection, by changing the above statement to the following:



### 3. Google Launches Stadia and Continues to Mislead Consumers

59. On November 19, 2019, Google launched the Stadia Pro service.

60. On the day of Stadia's launch, Google continued to mislead the media concerning the power of Stadia's games at launch.

61. On November 19, 2019, Stadia's head Phil Harrison provided an interview through IGN, one of the largest video game media outlets, in which he stated that the free game included with Stadia Pro at launch, Destiny 2, is included with the Stadia Pro service at 4k 60 FPS.

62. Specifically, Mr. Harrison stated “[w]e are giving every player who signs up and is buying our Founder’s Edition and our Premier Edition three months of Stadia Pro, which is our subscription, and included in that is the full Destiny 2 Shadowkeep experience which is absolutely phenomenal at 4k 60 frames per second...” See <https://www.youtube.com/StadiaPhilHarrison> (relevant portion of video is located at 12:43-13:07).

#### **4. The Truth About Stadia is Revealed**

63. Shortly after the launch of Stadia Pro, media reports began to surface claiming that Google is lying about the streaming quality and display resolution of Google Stadia’s service, and that many of the games offered by Google had a display resolution of only 1080p, and not the 4k resolution advertised by Google.

64. On November 21, 2019, 9to5Google, apparently very angry about Google’s deception, published an article titled “Google is blatantly lying about the quality of Stadia’s games, and that’s not okay.”

65. The title of said 9to5Google article was later changed to “Google is exaggerating the quality of Stadia’s games, and it’s not okay.” See <https://9to5google.com/2019/11/24/stadia-4k-games-quality/>. A copy of the original headline from the article was located in a video on a Youtube channel named TheQuartering that discussed the article. See <https://www.youtube.com/TheQuartering> (the headline is located at 3:46 in the video).

66. In said 9to5Google article, author Ben Schoon writes:

“With reviews and now more users starting to jump on Stadia, it’s become apparent quickly that the visual quality of games isn’t up to par with other

services. This could be partially to blame for the streaming nature of games, but it's been proven already that this simply isn't the case.

In its review, The Verge spoke to Bungie, the developers behind Destiny 2, and confirmed that Stadia's version of the game isn't the same 4K version as on other platforms. Rather, Destiny 2 on Stadia renders at 1080p and is upscaled to improve the quality. In other words, Destiny 2 currently never plays in 4K on Stadia.

The problem extends to other games, too. Red Dead Redemption 2, another big name for the platform, also doesn't play in true 4K. Eurogamer confirmed that the game only renders at 1440p and is then upscaled to 4K on a Chromecast Ultra. The quality difference is also very obvious when you look at the game side-by-side with its 4K version on the Xbox One X."

"In the case of Red Dead Redemption 2, some of the blame is very likely on Rockstar itself since the PC version of the game, which Stadia's copy is based on, has had many issues. However, it's just another example of where Google is blatantly lying about the 4K quality of games on Stadia.

Google's Phil Harrison explicitly said that all games will be running at 4K 60fps, but Destiny 2 and Red Dead Redemption 2 simply don't. Rather, they're upscaled to meet that.

Worse yet, there was a tweet that seemingly confirmed Red Dead Redemption 2 would run at 4K, but that tweet was swiftly deleted. **Presumably Google was quick to prevent what would have been a blatant lie from being on its account knowing that the game was at a lower resolution.**

Since the first reveal of Stadia, Google has bragged about the powerful hardware running the service and how it can handle 4K at 60fps without breaking a sweat, even leveraging multiple instances to better improve the quality. So far, though, we've yet to see Stadia actually pulling that off. If the company had said that some games ran at lower resolutions and relied on upscaling or even pushed the underlying hardware prowess less, this would be less of a problem. The same would apply if the settings these games run at on Google's end were disclosed more obviously.

Google clearly has the power to fix this, and I genuinely hope they do.

I can forgive Stadia for some of its shortcomings for now because, whether Google wants to admit it or not, the service is essentially in beta

right now. In fact, as new as the service is, the quality of games as it stands is pretty decent. Stadia won't matter for a year."

(Emphasis added).

67. In addition to the headline being changed from lying to exaggerating, the article also deleted the last sentence in the original, which stated "But if Google thinks it can blatantly lie about the quality of its games like this, they're wrong." See [https://www.youtube.com/watch?time\\_continue=226&v=9XVisvJ\\_9ls&feature=emb\\_log](https://www.youtube.com/watch?time_continue=226&v=9XVisvJ_9ls&feature=emb_log) (the original sentence is located at 6:02 in the video). Further, the original article did not include the next to last sentence praising the service.

68. It is possible that Google caused the changes in the 9to5Google headline and article in an attempt to decrease the gravity of the wrongdoing. Plaintiff will seek discovery from 9to5Google and Defendants to determine the cause for the changes.

69. Further, on November 21, 2019, the International Business Times published an article titled "Google Lied About Stadia Running All Games At 4K 60fps, Reports Claim" that stated, among other things, "[s]everal reports disputed Google's claims about the new Stadia game-streaming service, saying the cloud-based game service doesn't really run all games according to the tech giant's promises." See <https://www.ibtimes.com/google-lied-about-stadia-running-all-games-4k-60fps-reports-claim-2870798>.

70. Hundreds of consumers also complained across the internet about Google's misrepresentations, the poor resolution of Stadia, and Stadia's inability to play all games at 4k 60 FPS. See, e.g., [https://www.reddit.com/google\\_stadia\\_is\\_lying](https://www.reddit.com/google_stadia_is_lying); see also <https://www.reddit.com/r/Stadia/comments>.

71. On November 19, 2019, a user started a thread on Reddit, titled “Google used the ‘First come, first serve unique Stadia name’ to lure in buyers that were on the fence. They simply lied, just like they lied or at least mislead us about the quality of the service. What can we do to return the favor to Google?” Since the post, there have been 1.3k comments and 5.5k upvotes. See <https://www.reddit.com/r/Stadia>.

72. In response to media and consumer complaints, Google failed to explain its false and misleading statements and merely released the following statement:

“Stadia streams at 4K and 60 FPS - and that includes all aspects of our graphics pipeline from game to screen: GPU, encoder and Chromecast Ultra all outputting at 4k to 4k TVs, with the appropriate internet connection. Developers making Stadia games work hard to deliver the best streaming experience for every game. Like you see on all platforms, this includes a variety of techniques to achieve the best overall quality. We give developers the freedom of how to achieve the best image quality and framerate on Stadia and we are impressed with what they have been able to achieve for day one.”

“We expect that many developers can, and in most cases will, continue to improve their games on Stadia. And because Stadia lives in our data centers, developers are able to innovate quickly while delivering even better experiences directly to you without the need for game patches or downloads.”

<https://www.eurogamer.net/articles/2019-11-25-google-issues-statement-after-stadia-owners-say-it-broke-promises-over-game-performance>

73. It has now become clear that Google misled the public concerning Stadia and the reasons Google did that.

74. Google made false and misleading claims concerning the streaming quality of Stadia’s service in order to generate increased revenue for the Google Stadia division.

75. Google made false and misleading claims concerning the streaming quality of Stadia's service in order to generate increased revenue for the developers of games sold on the Stadia service.

76. With a larger customer base, now mostly locked into the Stadia service at launch through a large upfront purchase of the Founder's or Premiere Edition, many of the customers will purchase games on the Stadia service.

77. Having a large customer base to potentially purchase games encourages developers to invest more time and expense in developing and/or porting games to the Stadia platform.

78. Having a larger customer base also assures that there will be players available for online play with other players.

79. Google also made the misleading statements stated herein so that it would assure that it had a large base of customers from all across the world to provide a beta test for the Stadia service and allow Google to fix any issues in advance of the service being opened to a much larger base of subscribers expected when the Stadia Base is offered to consumers for free in 2020.

80. As a result of Google's actions, there are hundred, if not thousands, of articles and reports across the United States and the world containing misleading statements originating from Google that consumers are making purchasing decisions based upon.

81. Google has done nothing to correct the false information concerning the power and resolution of the games available on Stadia and does not disclose to consumers in the Google Stadia store the resolution of each of the games available for purchase.

82. Moreover, many of Stadia's customers are new to high resolution FPS gaming or have not played games for many years, such that they will likely not be able to determine that they are not enjoying the experience that they paid for.

83. On March 11, 2020, reports began to surface that Doom Eternal would not run 4k on Stadia.

84. For example, in an article titled "Doom Eternal Won't Be True 4K On Stadia After All Despite early promises that Doom Eternal would run in 'true 4K,' the final specs show that it's being upscaled from 1800p" and published by GameSpot on March 11, 2020, the author stated:

"Doom Eternal has been billed as a showpiece for Stadia, but with the launch coming it turns out it won't run at 4K resolution after all. Id Software posted a series of launch details and system specs on its official site, and the Stadia section notes that it will not run in true 4K. Instead, the site says, it will run at 1800p and be up-sampled to 2160p, matching the Xbox One X version of the game. It will run at 60 FPS and support HDR."

See <https://www.gamespot.com/articles/doom-eternal-Stadia>.

85. The author went on to state:

"At the GDC 2019 keynote where Google debuted Stadia for the first time, Id Software's Marty Stratton said the game would run at 'true 4K' resolution. That promise was touted as proof that you can stream games from the cloud, and Doom's fast-paced gameplay has made it one to watch for Stadia given the potential latency of cloud gaming. Google has faced criticism for its Stadia games not running in 4K, especially as that resolution was one of the key features promised to those who bought the Founder's Edition. Google has put the onus on developers, suggesting that the tech is capable of delivering 4K but developers are responsible for how they balance factors like image quality and framerate."

86. Again, numerous consumers complained on the internet that Google and id Software misled them as to the 4k resolution of Doom Eternal. See <https://www.reddit.com/r/Stadia/comments>.

87. id Software LLC intentionally made material misstatements concerning the resolution of Doom Eternal on the Stadia platform and wrongfully generated millions of dollars in additional revenue.

88. id Software LLC knew or should have known that Google was making misleading statements about the Stadia Pro subscription plan in that Doom Eternal would not be playable at the 4k 60 FPS gameplay that the Stadia Pro service offered, and that consumers were being misled about Doom Eternal.

89. id Software LLC did nothing to correct Google's misstatement and, instead, id Software sold access to Doom Eternal, and other games, through the Google Stadia subscription and wrongfully generated millions of dollars in revenue as a result.

90. Bungie, Inc. knew or should have known that Google was making misleading statements about the Stadia Pro subscription plan in that Destiny 2 would not be playable at the 4k 60 FPS gameplay that the Stadia Pro service offered, and that consumers were being misled about Destiny 2.

91. Bungie, Inc. did nothing to correct Google's misstatement and, instead, Bungie sold access to Destiny 2, and other games, through the Google Stadia subscription and wrongfully generated millions of dollars in revenue as a result.

92. The evidence shows that Stadia was never able to offer an experience greater than, or equal to, leading consoles and could not offer 4k 60 FPS games through

the internet because streaming technology will not allow for a lag free gaming experience at this time at 4k resolution.

93. For example, in an article titled “Doom Eternal on Stadia looks great - but the lag is just too high” and published on March 30, 2020, by Digital Foundry, the author stated:

“The unavoidable conclusion is that this is a game that is simply a lot more fun to play on a local console. Once you bundle in the field of view option, the improved terrain and the snappier input it’s hard to justify going with Stadia purely on the grounds of convenience, unless you don’t have another console available. It’s certainly playable, but to appreciate the hard work id Software put into nailing Doom Eternal’s high tempo action, there are much better options out there. And for a genre that’s defined by its speed of gameplay, it stands out more so than most Stadia games I’ve tried. Sadly then, it’s a fascinating test case, but as with Wolfenstein Youngblood, the practical result spells out the problems Stadia has with running FPS games: visual quality holds up, but the gameplay takes a hit.”

See <https://www.eurogamer.net/articles/digitalfoundry>.

94. Defendants’ misleading statements are still being carried forward throughout the media even after the fraud was revealed, and with no mention of Defendants’ false claims. For example, on March 20, 2020, the Tech Times published an article titled “Google Stadia Streaming Service Introduces High-Framerate, Low-Latency Cloud Gaming” and stated:

**High Frame Rate, Low Latency**

What sets Stadia apart from its competition is its promise to deliver video game streaming at high frame rates without suffering from low latency.

By leveraging its data centers, Google said its new game streaming service can support games with up to 4K of resolution at 60 frames per second (fps). This was demonstrated during the GDC presentation using internet connection with a bandwidth of 25 megabits per second (Mbps).

Google also plans to beef up Stadia's streaming capabilities in the future to support up to 8K resolution games at 120 fps.

#### **Stadia's Game Library**

Google is lining up several new titles for Stadia's game library. One of the first games to be announced is Doom Eternal, an upcoming first-person shooter from game developer id Software and publisher Bethesda Softworks. The game will support up to 4K resolution at 60 fps.

See <https://www.techtimes.com/Stadia>

#### **5. Plaintiff is Financially Injured as a Result of Defendants' Unfair and Deceptive Practices**

95. On November, 23, 2019, Plaintiff, like numerous other consumers, purchased Google Stadia's Premiere Edition for \$129 through Google's website, based on reasonable reliance of media reports stating that Stadia was more powerful than leading gaming consoles and would display all games at 4k resolution, including Destiny 2 and Doom Eternal.

96. After Plaintiff received the Google Stadia Premier Edition, she learned that there were articles on the internet claiming that Google lied with respect to the power of Google Stadia over leading gaming consoles. Upon further investigation, Plaintiff discovered that Google made false and misleading statements about the power of Stadia and that all Stadia games would be playable at 4k resolution.

97. Plaintiff was very angry with Google because she would not have purchased any Stadia products or service if Google did not make any misleading claims and retained counsel to potentially file a class action lawsuit against Google.

98. As a result of Defendants' deceptive actions, Plaintiff has been damaged by approximately \$129, the purchase price of the Stadia Premier Edition.

**CLASS ACTION ALLEGATIONS**

99. Plaintiff brings this action pursuant to Article 9 of the New York Civil Practice Law & Rules (“C.P.L.R.”) on behalf of the following nationwide class:

All persons or entities that reside in the United States and who purchased the Stadia Founder’s Edition, the Stadia Premier Edition, and/or subscriptions to the Stadia Pro service based on information that Google Stadia was more powerful than leading consoles and/or all games on Stadia would playable at 4k resolution, during the period between June 6, 2019 and the date of the final disposition of this action, and/or such class or subclass as the Court may deem appropriate (the “Class”).

100. Plaintiff reserves the right to amend the definition of the Class if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

101. Plaintiff reserves the right to establish sub-classes as appropriate.

102. This action is brought and may be properly maintained as a class action under the provisions of Article 9 of the C.P.L.R., and satisfies the requirements thereof.

103. There is a well-defined community of interest among members of the Class, and the disposition of the claims of these members of the Class in a single action will provide substantial benefits to all parties and to the Court.

104. The members of the Class are so numerous that joinder of all members of the Class is impracticable. At this time, Plaintiff believes that the Class includes tens of thousands of members. Therefore, the Class is sufficiently numerous that joinder of all members of the Class in a single action is impracticable, and the resolution of their claims through the procedure of a class action will be of benefit to the parties and the Court.

105. Plaintiff's claims are typical of the claims of the members of the Class whom they seek to represent because Plaintiff and each member of the Class have been subjected to the same deceptive and improper practices by Defendants and have been damaged in the same manner.

106. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no interests that are adverse to those of the members of the Class that they seek to represent. Plaintiff is committed to the vigorous prosecution of this action and, to that end, Plaintiff has retained counsel that is competent and experienced in handling complex class action litigation on behalf of consumers.

107. A class action is superior to all other available methods of the fair and efficient adjudication of the claims asserted in this Complaint under Article 9 of the C.P.L.R. because:

- a) The expense and burden of individual litigation would not be economically feasible for members of the Class to seek to redress their claims other than through the procedure of a class action.
- b) If separate actions were brought by individual members of the Class, the resulting multiplicity of lawsuits would cause members to seek to redress their claims other than through the procedure of a class action; and
- c) Absent a class action, Defendants likely would retain the benefits of its wrongdoing, and there would be a failure of justice.

108. Common questions of law and fact exist as to the members of the Class, and predominate over any questions that affect individual members of the Class.

109. The common questions of fact include, but are not limited to, the following:

- a) Whether the nationwide practice by Google of selling the Stadia Founder's Edition, the Stadia Premier Edition, and/or subscriptions to Stadia, based on false and misleading statements as to power of the service compared to Xbox One X and Playstation 4 Pro and the resolution and quality of the Stadia service violates the applicable consumer protection statutes;
- b) Whether Defendants engaged in unlawful, unfair, misleading, or deceptive business acts or practices;
- c) Whether Defendants engaged in consumer fraud, deceptive trade practices, or other unlawful acts;
- d) Whether Defendants made any negligent misrepresentations;
- e) Whether Defendants was unjustly enriched; and
- f) Whether Plaintiff and members of the Class are entitled to an award of reasonable attorneys' fees, pre-judgment interest, and costs of this suit.

110. In the alternative, this action is certifiable under the provisions of Article 9 of the C.P.L.R. because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole and necessitating that any such relief be extended to members of the Class on a mandatory, class-wide basis.

111. Plaintiff is not aware of any difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

**COUNT I**  
**Violation of State Consumer Protection Laws**

112. Plaintiff incorporates by reference the allegations in every paragraph in this complaint.

113. Plaintiff brings this claim on her own behalf and on behalf of: (a) all other persons or entities who purchased the Stadia Founder's Edition, the Stadia Premier Edition, and/or subscriptions to the Stadia Pro service, based on misleading claims by Defendants concerning the power of Stadia and Stadia's ability to play games at 4k resolution.

114. Plaintiff and each member of the Class is a consumer, purchaser or other person entitled to the protection of consumer protection laws of the state in which he/she purchased the Stadia Founder's Edition, the Stadia Premier Edition, and/or subscriptions to the Stadia Pro service, during the period between March 17, 2020, and the date of the final disposition of this action.

115. The consumer protection laws of the state in which Plaintiff and each member of the Class made their purchases declares that unfair or deceptive acts or practices in the conduct or trade or commerce are unlawful.

116. The Stadia Founder's Edition and Stadia Premier Edition marketed and sold by Defendants constitute products to which consumer protection laws apply to.

117. Each of the fifty states and the District of Columbia have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- c) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;
- g) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;

- l) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q) Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et seq.*;
- t) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;

- w) Michigan Consumer Protection Act, §§ 445.901, *et seq.*;
- x) Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y) Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- z) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- ee) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- gg) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;

- ii) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. §§ 201-1, *et seq.*;
- nn) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr) Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act;
- ss) Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, § 2451, *et seq.*;
- uu) Virginia Consumer Protection Act, Virginia Code Ann. §§ 59.1-196, *et seq.*;
- vv) Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;

ww) West Virginia Consumer Credit and Protection Act, West Virginia

Code § 46A-6-101, *et seq.*;

xx) Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et seq.*;

and

yy) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§ 40-12-101, *et*

*seq.*

118. The Google Stadia products and services marketed and sold by Defendants constitutes products to which these consumer protection laws apply.

119. Defendants violated the above stated consumer protections laws by engaging in the unfair practices as described in this complaint.

## **COUNT II** **Breach of Contract**

120. Plaintiff incorporates by reference the allegations in every paragraph in this complaint.

121. Defendants agreed and promised that it would provide a gaming service more powerful than leading consoles and that all games offered on the Stadia service would be playable at 4k resolution.

122. Plaintiff, and each class member, paid for a Google Stadia subscription with the expectation that Defendants would provide a service more powerful than leading consoles, with the ability to play all games at 4k resolution.

123. Defendants failed to provide the services as promised.

124. Plaintiff and class members suffered damages amounting to the amounts paid for Stadia products in reliance upon Defendants' promises.

**COUNT III**  
**Negligent Misrepresentation**

125. Plaintiff incorporates by reference the allegations in every paragraph in this complaint.

126. Defendants, directly or through its agents and employees, made false representations, concealments, and nondisclosures to Plaintiff and members of the Class.

127. Specifically, Defendants represented that Stadia was more powerful than Xbox One X and Playstation 4 Pro and that all games on Stadia would support 4k.

128. Defendants failed to disclose that many games on Stadia would not play at 4k and the resolution quality of many of the games were not better than Xbox One X or Playstation 4 Pro.

129. Plaintiff and the class relied on such representations in purchasing the Stadia Founder's Edition or Stadia Premier Edition.

130. In making the representations of fact to Plaintiff and members of the Class described herein, Defendants have failed to fulfill its duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

131. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true.

132. Defendants made and intended the misrepresentations to induce the reliance of Plaintiff and members of the Class.

133. Plaintiff and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Stadia Founder's Edition, Stadia Premier Edition, or Stadia subscription service, which reliance was justified and reasonably foreseeable.

134. As a result of Defendants' wrongful conduct, Plaintiff and members of the Class have suffered economic losses and other general and specific damages.

**COUNT IV**  
**Unjust Enrichment**

135. Plaintiff incorporates by reference the allegations in every paragraph of this complaint.

136. By its wrongful acts and omissions, Defendants have been unjustly enriched at the expense of Plaintiff and members of the Class, and thus Plaintiff and members of the Class were unjustly deprived of time and value of money provided to Defendants.

137. It would be inequitable and unconscionable for Defendants to retain the profit, benefit, and other compensation it obtained from its deceptive, misleading, unfair and unlawful conduct alleged herein.

138. Plaintiff and members of the Class seek restitution from Defendants, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by Defendant from its wrongful conduct.

**COUNT V**  
**Claim for Attorney's Fees**

139. Plaintiff incorporates by reference the allegations in every paragraph of this complaint.

140. Plaintiff, through her counsel, caused Google to provide a \$10 coupon to current and former Stadia subscribers, amounting to millions of dollars in value.

141. Plaintiff and her counsel are entitled to attorney's fees, including up to a one third of the value obtained for Google Stadia subscribers, the exact amount to be determined at trial.

**RELIEF REQUESTED**

Accordingly, Plaintiff, on behalf of herself and the members of the Class, seek judgment as follows:

1. Certifying the Class as requested herein, certifying Plaintiff as the representatives of the Class, and appointing Plaintiff's counsel as counsel for the Class;
2. Ordering that Defendants are financially responsible for notifying all members of the Class of the alleged misrepresentations and omissions set forth herein;
3. Awarding Plaintiff and the members of the Class compensatory damages in an amount according to proof at trial;
4. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and members of the Class;
5. Awarding declaratory and injunctive relief, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its conduct and pay them

restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful or unlawful;

6. Awarding to Plaintiff and the Class punitive damages;

7. Ordering Google to stop selling the Stadia Premier Edition, games purchased through Stadia, and the Stadia subscription service, or to correct the deceptive behavior;

8. Awarding interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;

9. Awarding attorneys' fees, expenses, and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action;

10. Awarding attorneys' fees up to one third of the value already obtained for class members as a result of pre-lawsuit negotiations.

10. Directing such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Class demand a trial by jury as to all matters so triable.

Dated: October 22, 2020



James C. Kelly

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November 26, 2019

**VIA U.S. MAIL & EMAIL**

David C. Drummond  
Chief Legal Officer  
Alphabet Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
ddrummond@google.com

Re. *Litigation matter re falsely advertised Google Stadia gaming performance, including failure to deliver true 4k games, smooth gameplay, and causing Chromecast Ultra devices to overheat*

Dear Mr. Drummond,

NOTICE OF VIOLATION OF STATE CONSUMER PROTECTION LAWS, INCLUDING THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, AND THE NEW YORK GENERAL BUSINESS LAW, AND 30-DAY RIGHT TO CURE. THIS IS A DEMAND LETTER AND MUST BE FORWARDED TO THE APPROPRIATE PARTY AT ALPHABET INC., FOR IMMEDIATE RESOLUTION. FAILURE TO RESPOND TO THIS MAY RESULT IN ACTION BEING TAKEN.

PLEASE TAKE NOTICE that we believe Alphabet Inc. ("Google") is in violation of several state consumer protection laws by selling falsely advertised Google Stadia gaming systems that underperform, including failure to deliver true 4k resolution games, smooth gameplay, and causing Chromecast Ultra devices to overheat.

David C. Drummond

November 26, 2019

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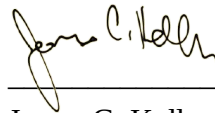
A description of the wrongdoing can be found in several articles on the internet, including here <https://9to5google.com/2019/11/24/stadia-4k-games-quality/> and here <https://www.pcmag.com/news/372148/stadia-overheating-chromecast-ultra-units-causing-shutdowns>,  
[wns](https://www.pcmag.com/news/372148/stadia-overheating-chromecast-ultra-units-causing-shutdowns),

As a result of Google's actions, Google has committed deceptive, illegal, and/or unfair acts in violation of various state consumer law statutes.

YOU HAVE THIRTY (30) DAYS from the date on which this notice is served upon you to do the following in order to remedy your violations: 1) refund Google Stadia customers who purchased Google Stadia based on the alleged false advertising; 2) stop falsely advertising Google Stadia; 3) correct the issues causing Google Chromecast Ultra devices to overheat and 4) pay for agreed upon legal fees and expenses related to this demand.

FAILURE TO TAKE THE ABOVE ACTION WITHIN 30 DAYS OF THE RECEIPT OF THIS NOTICE SHALL RESULT IN THE LAW OFFICE OF JAMES C. KELLY FILING A CIVIL LAWSUIT for Damages pursuant to New York General Business Law § 349, California Civil Code Section 1780, all other states consumer protection laws, and for Restitution and Injunctive relief on behalf of others similarly situated pursuant to California Business and Professions Code Section 17200 et seq. and California Civil Code Section 1780, and for punitive damages, treble Damages, and attorney fees as authorized by the statute, and similar state consumer protection laws.

Sincerely,



James C. Kelly