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

SAIF JAFRI, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

SANDISK LLC, and WESTERN DIGITAL
CORPORATION,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Saif Jafri (“Plaintiff”) brings this action on behalf of himself and all others
 2 similarly situated against SanDisk LLC (“SanDisk”) and Western Digital Corporation (“Western
 3 Digital”) (collectively, “Defendants”). Plaintiff makes the following allegations pursuant to the
 4 investigation of his counsel and based upon information and belief, except as to the allegations
 5 specifically pertaining to himself, which are based on personal knowledge.

6 NATURE OF THE ACTION

7 1. This is a class action lawsuit on behalf of purchasers of defective SanDisk and
 8 Western Digital solid-state drives (the “SSDs” or the “Drives”).¹ These SSDs face an extreme risk
 9 of failing within months or even days of purchase due to a design and manufacturing defect (the
 10 “Defect”). “Drive failure” in this context means that all data from the Drives is lost, including the
 11 internal file system, and new data cannot be added even if the Drive is reformatted.² After data has
 12 been stored on the Drives, failure can occur *without any further input from the user*.³ The result is
 13 that tens of thousands – or hundreds of thousands – of consumers and working professionals who
 14 have trusted SanDisk to safely store their data have lost untold terabytes with only a paperweight in
 15 the shape of an SSD to show for it. A drive that has a Defect causing an extreme risk of failure and
 16 permanent data loss does not function as a drive and has no value; no reasonable consumer would
 17 pay hundreds of dollars for a storage device that has a high likelihood of failing at any time and
 18 causing permanent data loss. No reasonable consumer would store their personal data on such a
 19 device.

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 22 ¹ The specific drives at issue are the: (1) SanDisk Extreme Portable 4TB (SDSSDE61-4T00), (2)
 23 SanDisk Extreme Pro Portable 4TB (SDSSDE81-4T00), (3) SanDisk Extreme Pro Portable 2TB
 24 (SDSSDE81-2T00), (4) SanDisk Extreme Pro Portable 1TB (SDSSDE81-1T00), (5) SanDisk Pro-
 25 G40 Portable SSD, and (6) Western Digital My Passport 4TB (WDBAGF0040BGY). “TB” stands
 for terabyte. One TB is equivalent to 1,000 gigabytes.

26 ² *SanDisk Extreme SSDs keep abruptly failing – firmware fix for only some promised*, ARS
 27 TECHNICA, May 19, 2023 (<https://arstechnica.com/gadgets/2023/05/sandisk-extreme-ssds-keep-abruptly-failing-firmware-fix-for-only-some-promised/>).

28 ³ *Buyer Beware: some SanDisk Extreme SSDs are wiping people’s data*, THE VERGE, May 22, 2023
 (<https://www.theverge.com/2023/5/22/23733267/sandisk-extreme-pro-failure-ssd-firmware>)
 (“Western Digital has now tacitly admitted that its SanDisk Extreme Pro portable solid-state drives
 were critically broken after all — by issuing a firmware update that’ll hopefully keep the 4TB
 model from *wiping your data all by itself*.”) (emphasis in original).

1 2. This Defect in Defendants’ SSDs goes to their core functionality—as a memory
2 storage device. Defendants market these defective SSDs to consumers as a place where they can
3 “back up” a user’s files “in *one location*.”⁴ Defendants even *encourage* users to download their
4 applications that will to “automatically move files from your device to your SSD to free up
5 space,”⁵ meaning that storage in other locations (as a failsafe or otherwise) *is not necessary* once
6 data is loaded onto the Drives, according to Defendants. For many consumers, this means
7 transferring over thousands of photos and videos of precious moments with family and friends,
8 among other personal data. Yet once these SSD fail, this data is irretrievably lost, like the burning
9 of the library at Alexandria.

10 3. The Defect manifests in an identical manner across the Drives. Every Drive
11 manufactured has the Defect. Accordingly, the Drives are substantially similar for purposes of this
12 class action complaint.

13 4. SanDisk has been “downplaying the issue for months,”⁶ while continuing to
14 encourage consumers to save more and more of their life’s memories on these devices.
15 Defendants’ one and only attempt at fixing the Defect in May 2023 was unsuccessful.⁷ Despite
16 this, SanDisk continues to sell the Drives and has even placed them on steep discount in what
17 outwardly appears to be an effort at clearing its shelves of defective stock, but no recall,
18 reimbursement, or replacement program has been announced.

19 5. The cause of the issue has not yet been made public, but those with knowledge in
20 the field of solid-state drive technology have speculated that there is a design and manufacturing
21 defect affecting all Drives manufactured on or after November 2022.

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24 ⁴ SanDisk Extreme Pro Portable 4TB (SDSSDE81-4T00), WESTERN DIGITAL,
<https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd#SDSSDE81-1T00-G25> (last accessed August 16, 2023).

25 ⁵ *Id.*

26 ⁶ *Id.*

27 ⁷ *We just lost 3TB of data on a SanDisk Extreme SSD*, THE VERGE, August 7, 2023
28 (<https://www.theverge.com/22291828/sandisk-extreme-pro-portable-my-passport-failure-continued>).

1 interested in purchasing Defendants' products in the future, so long as Defendants fix the Defects
2 and properly label their products going forward.

3 11. SanDisk LLC is a Delaware limited liability company with headquarters in Milpitas,
4 California. SanDisk is a wholly owned brand of Western Digital.

5 12. Western Digital Corporation is a Delaware corporation with headquarters in San
6 Jose, California. Western Digital acquired SanDisk Corporation in 2016, and has designed and
7 manufactured all SanDisk products since. Accordingly, Western Digital designed and
8 manufactured the defective Drives at issue in this action.

9 **JURISDICTION AND VENUE**

10 13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
11 1332(d) because there are more than 100 class members and the aggregate amount in controversy
12 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
13 citizen of a state different from Defendants.

14 14. This Court has personal jurisdiction over Defendants because Defendants conduct
15 substantial business within California, such that Defendants has significant, continuous, and
16 pervasive contacts with the State of California. Additionally, Defendants' principal places of
17 business are in this District.

18 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do
19 substantial business in this District, a substantial part of the events giving rise to Plaintiff's claims
20 took place within this District (e.g., the research, development, design, and marketing of the SSDs),
21 and Defendants' principal places of business are in this District.

22 **FACTUAL ALLEGATIONS**

23 **General Factual Overview**

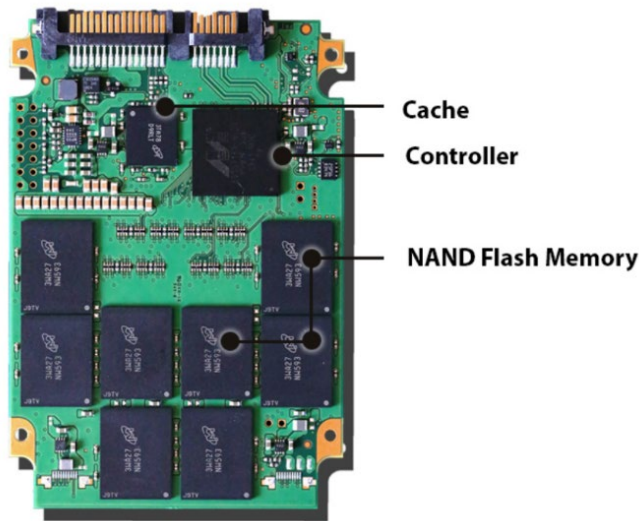
24 16. Solid-state drives are a type of long-term data storage device. As the name
25 suggests, solid-state drives have no moving parts. Information is written and retrieved from flash
26 memory chips electrically.⁸ In layman's terms, SSDs are an evolution of magnetic-based "hard

27 ⁸ *What is a solid-state drive?*, IBM ([https://www.ibm.com/topics/solid-state-](https://www.ibm.com/topics/solid-state-drives#:~:text=A%20solid%2Dstate%20drive%20(SSD,known%20as%20pages%20or%20sectors)
28 [drives#:~:text=A%20solid%2Dstate%20drive%20\(SSD,known%20as%20pages%20or%20sectors\)](https://www.ibm.com/topics/solid-state-drives#:~:text=A%20solid%2Dstate%20drive%20(SSD,known%20as%20pages%20or%20sectors))

1 drives” traditionally found in desktop computers. SSDs are basically the next generation of hard
2 drives. The vast majority of computers and laptops sold in recent years use SSDs instead of legacy
3 magnetic-based hard drives, which are now a rarity. SSDs are ubiquitous.

4 17. There are many manufacturers who make SSDs. Since SSDs are used as the
5 primary storage solution in consumer, commercial, and industrial applications, the industry tracks
6 malfunction and error rates, and there are statistics on expected rates of drive failure (just as there
7 are statistics on expected failure rates on many forms of commercial equipment).

8 18. In an SSD, flash memory chips are soldered onto a larger circuit board which
9 comprises the SSD proper.⁹ If the SSD is plugged directly into a computer motherboard, the board
10 is left exposed. If the SSD is going to be used on multiple machines or taken on the road, it is
11 usually encased in a plastic housing which has a USB connection for interfacing with computers –
12 this whole unit is what is colloquially known as a “portable SSD.” This means that SSDs can be
13 internal or external.



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An SSD for internal use



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A SanDisk Extreme Pro Portable SSD

⁹ *Id.*



A disassembled SanDisk Extreme Pro Portable SSD

19. A hard disc drive (“HDD”), on the other hand, is a platter of magnetic metal discs which are read from and written to with a magnetic stylus that skims back and forth just nanometers above the discs as they spin at upwards of 7,600 RPM, like the world’s fastest and most precise record player.¹⁰

20. SSDs have exponentially faster read and write times granted by solid-state storage. This means that SSDs have become the de facto mode of data storage, especially in scenarios where consumers need to quickly access and store data while on-the-go.

21. Both SSDs and HDDs should be expected to last *at least* three (3) to five (5) years with regular use.¹¹ An HDD typically fails because of the immense physical stress that the metal discs are placed under as they spin. SSDs are different in that they typically fail after a large amount of data has been written to the drive.

22. Manufacturers of SSDs use “total terabytes written” (TBW) as the metric by which they estimate the useful life of the drive to consumers. For example, if an SSD had a TBW of 2,000 terabytes (“TB”), after a user had written 2,000 TB to the drive they may begin to experience data loss and corruption.

¹⁰ *What is a hard disk drive (HDD)?*, CRUCIAL (<https://www.crucial.com/articles/pc-builders/what-is-a-hard-drive>).

¹¹ *How Long Do Hard Drives (and SSDs) Last?*, NEWEGG.COM, June 21, 2021 (<https://www.newegg.com/insider/how-long-do-hard-drives-and-ssds-last/>)

1 23. The TBW for the Drives at issue in this case are unlisted, however, upon
2 information and belief, were it not for the defect it would be in the hundreds or thousands of
3 terabytes, depending on the model of Drive and its storage capacity.

4 24. Reasonable consumers like Plaintiff thus purchase SSDs with the expectation that
5 they will last years before being at risk of failure.

6 **Defendants' Products and the Defect**

7 25. Defendants are engaged primarily in the manufacture and sale of computer drives
8 and data storage solutions, and they are a near household name when it comes to SSDs.

9 26. Defendants are the second largest manufacturers and retailers of SSDs in the world
10 with a revenue of \$18.79 billion in 2022 alone.¹²

11 27. Both SanDisk (before it was acquired) and Western Digital have been players in the
12 data storage market for decades. SanDisk was founded in 1988 and Western Digital was founded
13 in 1970 as General Digital Corporation.

14 28. Because of their longstanding position at the top of the market, consumers have
15 grown to recognize the Western Digital and SanDisk branded drives as being high-quality,
16 dependable, products.

17 29. Defendants lean into their reputability and represent their Drives as being high-
18 quality and dependable.

19 30. As of late, however, Defendants' reputation for quality and dependability has taken
20 a nosedive.

21 31. In January 2023 complaints began to surface that SanDisk's Extreme and Extreme
22 Pro Portable SSDs were suddenly wiping data and becoming unreadable.¹³

23 32. In February 2023 a Reddit user raised a flag warning about the SanDisk 4TB
24 Extreme Pro Portable SSDs in particular, saying: "Multiple DITs/Loaders/ACs on both coasts have

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26 ¹² Western Digital Reports Fiscal Fourth Quarter and Fiscal Year 2022 Financial Results,
27 WESTERN DIGITAL, August 8, 2023,
<https://www.westerndigital.com/company/newsroom/press-releases/2022/2022-08--05-western-digital-reports-fiscal-fourth-quarter-and-fiscal-year-2022-financial-results/>.

28 ¹³ See *Supra* Note 2.

1 experienced the exact same failure with these drives over the last month. The symptom seems to
2 be that after a sustained write they will completely lose their filesystem and it's a total crap shoot
3 whether you can recover it or not.” 261 comments were posted in reply to the warning, with many
4 users chiming in that they had experienced the same issue with their SanDisk Drives.

5 33. The tech press took notice of the issue in May when many of their own staffers
6 began to experience data loss. One producer for tech news site *The Verge* reported losing upwards
7 of 4TB of video footage *multiple times* after two SanDisk 4TB Extreme Pro Portable SSDs failed,
8 the second of which was a replacement sent by Defendants.¹⁴

9 34. Another staffer, this time for *Ars Technica*, another well-known tech news site,
10 reported losing two SanDisk 2TB Extreme Pro SSDs.¹⁵

11 35. After multiple articles calling attention to the problem, Defendants pushed a
12 firmware update for the affected drives at the end of May.¹⁶ Defendants claimed that this would
13 solve the problem, saying “[w]e addressed this firmware issue in the manufacturing process, and
14 we can confirm that the issue is not impacting currently shipping products.”¹⁷

15 36. However, even after the May firmware update, the problems persisted. On July 26,
16 2023 another Reddit user posted a comment stating: “I had one of the 4TBs unmount on a mac and
17 become unmountable after that. **I applied the firmware update, and about a week after that, I**
18 **was transferring some files from my Android device to it and it did the same thing,**
19 **unmounted and would no longer mount unless you formatted it.** The data could be recovered
20 with Diskdrill, but with generic serialized names. The first time the drive failed, I was unaware of
21 the problem and actually lost a lot of critical data.”¹⁸ (Emphasis added).

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¹⁴ See *Supra* Note 3.

¹⁵ See *Supra* Note 2.

¹⁶ *SanDisk's silence deafens as high-profile users say Extreme SSDs still broken*, ARS TECHNICA, Aug. 10, 2023 (<https://arstechnica.com/gadgets/2023/08/sandisk-extreme-ssds-are-still-wiping-data-after-firmware-fix-users-say/>).

¹⁷ *Supra* Note 2

¹⁸ https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_ssds/

1 37. On August 7, 2023 a staffer at *The Verge* had yet another SSD fail.¹⁹

2 38. On August 10, 2023 another Reddit user posted: “I literally lost all my data two
3 weeks ago thanks to SanDisk. And my backup drive, a WD passport, failed on the same night.
4 SanDisk is owned by WD. So guess all WD drives are shit. I lost 5 years of work.”²⁰

5 39. That same day, another Reddit user posted: “I work in digital media and have had an
6 untold number of friends and colleagues lose data because of the recent SanDisk drive failures. I
7 personally had two brand new Extreme Pro SSDs corrupt this summer, both within days of
8 purchasing. I’ve used these drives for years and never lost data before, but twice in two weeks has
9 scared me away from ever purchasing Sansdisk storage again.”²¹

10 40. Many of the consumers affected by the defect are professionals who have had
11 decades of experience with use and maintenance of data-storage devices. The failures were not a
12 result of user error, but symptomatic of a widespread defect in the design and manufacture of the
13 drives.

14 41. This slew of Drive failures is contrary to Defendants’ representations. Indeed,
15 Defendant SanDisk represents its Extreme Pro line of SSDs as “a rugged, dependable storage
16 solution” that is “reliable enough to take on any adventure.”²² Defendant SanDisk makes
17 essentially the same representations about its non-Pro line of Extreme SSDs, describing them as
18 “durable drive[s] that can take a beating” with “Professional-Grade Storage.”

19 **Defendants Knew or Should Have Known About the Issue Since at Least January 2023**

20 42. SanDisk appears to have been on notice of this problem for a significant amount of
21 time. In March of 2023, Reddit user KengoSawa2 posted: “This problem is also occurring in
22 Japan. I am a post-production engineer and I encountered the same problem. I can’t give you
23 more details, **but the problem was recognized by the Japanese distributor and passed on to**

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25 ¹⁹ See *Supra* Note 5.

26 ²⁰https://www.reddit.com/r/gadgets/comments/15noi3k/sandisks_silence_deafens_as_highprofile_users_say/

27 ²¹ *Id.*

28 ²² <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd#SDSSDE81-1T00-G25>

1 **SanDisk**, and is now being verified by the developer. I am also told that this problem is causing a
2 fuss and is only for those manufactured after November 2022. My gut feeling is that this appears
3 to be a design defect due to a minor change or a lot defect due to a problem during manufacturing.
4 In any case, we should continue to report this to the manufacturer to prompt an official statement
5 from Sandisk.”²³ (Emphasis added).

6 43. Despite this, Defendants have not recalled the Drives or taken any action to remove
7 the Drives from the market. Instead, it appears that Defendants have been astroturfing their
8 reviews and selling the Drives at a steep discount, upwards of 66% in some instances.

9 44. The reviews depicted below, ostensibly written three days apart feature many of the
10 same awkward marketing phrases and talking points:

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https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_ssds

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Panda

★★★★☆ **Speed and Reliability in a Compact Package - A Four-Star Review**

Reviewed in the United States on July 20, 2023

Color: Black | Capacity: 2TB | **Verified Purchase**

I recently purchased the SanDisk 2TB Extreme Portable SSD, and it has proven to be a reliable and high-performance external storage solution for my data-intensive needs. With its exceptional speed, compact design, and sturdy build, it earns a solid four-star rating.

One of the standout features of this portable SSD is its lightning-fast speed, boasting up to 1050MB/s transfer rates. This impressive speed allows for seamless handling of large files, making it an ideal choice for photographers, content creators, and anyone dealing with data-heavy tasks. Transferring bulky files becomes a breeze, saving valuable time and enhancing productivity.

The compact and lightweight design of the SanDisk Extreme SSD is a significant advantage for users on the go. It easily fits into my bag or pocket, making it a convenient companion for travel or remote work. Despite its small size, the SSD feels robust and durable, providing peace of mind when taking it along on my adventures.

[▼ Read more](#)

10 people found this helpful

Helpful

| Report



Yanky

★★★★★ **Slim and fast**

Reviewed in the United States on July 23, 2023

Color: Black | Capacity: 2TB | **Verified Purchase**

The SanDisk 2TB Extreme Portable SSD is an absolute powerhouse! This external solid-state drive has completely transformed the way I manage and transfer my data, and I couldn't be more impressed with its performance.

The lightning-fast speed of up to 1050MB/s is nothing short of remarkable. Transferring large files and folders is now a breeze, saving me valuable time and boosting my productivity. Whether I'm working with 4K videos, high-resolution images, or extensive project files, this SSD handles it all with ease.

The USB-C and USB 3.2 Gen 2 compatibility provide seamless connectivity across various devices, making it incredibly versatile. I can effortlessly connect it to my laptop, desktop, or even my smartphone, enabling me to access my data on the go without any hassle.

The compact and rugged design is perfect for my on-the-go lifestyle. It's shock-resistant, which gives me peace of mind knowing that my data is safe even during accidental drops or bumps. Additionally, the sleek

[▼ Read more](#)

7 people found this helpful

Helpful

| Report

1 45. Defendants' bald-faced attempt at hocking their defective Drives does nothing to
2 change the situation for the thousands of consumers who have lost their data. It does nothing to
3 help them recover that data. All it does is place an ever-growing population of consumers, who
4 trust Defendants products, at risk of losing critical data.

5 **CLASS ALLEGATIONS**

6 46. Plaintiff Saif Jafri brings this action as a class action pursuant to Federal Rules of
7 Civil Procedure 23(a), 23(b)(2), and 23(b)(3), on behalf of himself and all other similarly situated
8 consumers, and seeks to represent a class defined as:

9 All persons in the United States who purchased any Drives manufactured
10 after November 2022 (the "**Class**"). Excluded from the Class are persons
11 who made such purchase for purpose of resale.

12 47. Plaintiff also seeks to represent a subclass of all Class members who purchased an
13 affected Drive manufactured after November 2022 in California (the "**California Subclass**").

14 48. Members of the Class and Subclass are so numerous that their individual joinder
15 herein is impracticable. On information and belief, members of the Class and Subclass number in
16 the thousands. The precise number of Class members and their identities are unknown to Plaintiff
17 at this time but may be determined through discovery. Class members may be notified of the
18 pendency of this action by mail and/or publication through the distribution records of Defendants
19 and third-party retailers and vendors.

20 49. Common questions of law and fact exist as to all Class members and predominate
21 over questions affecting only individual Class members. Common legal and factual questions
22 include, but are not limited to:

- 23 (a) Whether the Drives are defective;
24 (b) Whether the defect is hardware based or software based; and
25 (c) Whether Defendants knew about the defect before selling the
26 Drives to the public.

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50. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff purchased Defendants’ SSDs in reliance on the representations and warranties described above, experienced the melting defect, and suffered a loss as a result of that purchase.

51. Plaintiff is an adequate representative of the Class and Subclass because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

52. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class and Subclass members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants’ liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants’ liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
Breach of the Implied Warranty of Merchantability

53. Plaintiff incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein.

54. Plaintiff brings this claim individually and on behalf of the Class and Subclass members against Defendants.

55. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers, of the Drives impliedly warranted that the Drives were fit for use as data storage devices. In fact,

1 Plaintiff and Class members experienced their Drives suddenly wiping all of their data and ceasing
2 to store any more data, rendering the Drives useless.

3 56. Defendants breached the warranty implied in the contract for the sale of the Drives
4 because the Drives could not “pass without objection in the trade under the contract description,”
5 the goods were not “of fair average quality within the description,” the goods were not “adequately
6 contained, packaged, and labeled as the agreement may require,” and the goods did not “conform
7 to the promise or affirmations of fact made on the container or label.” *See* U.C.C. § 2-314(2)
8 (listing requirements for merchantability). As a result, Plaintiff and the Class members did not
9 receive the goods as impliedly warranted by Defendants to be merchantable.

10 57. Plaintiff and Class members purchased the Drives in reliance upon Defendants’ skill
11 and judgment and decades of experience in the data storage field in properly packaging, labeling,
12 and marketing the Drives.

13 58. The Drives were not altered by Plaintiff or Class members.

14 59. The Drives were defective when they left the Defendants’ exclusive control.

15 60. Defendants knew that the Drives would be purchased and used without additional
16 testing by Plaintiff and Class members.

17 61. The Drives were defectively designed and unfit for their intended purpose, and
18 Plaintiff and Class members did not receive the goods as warranted.

19 62. As a direct and proximate cause of Defendants’ breach of the implied warranty,
20 Plaintiff and the Class and Subclass members have been injured and harmed because they would
21 not have purchased the Drives if they knew the truth about the Drives. As received by Plaintiff and
22 the Class Members, the Drives are worthless.

23 **COUNT II**
24 **Unjust Enrichment**

25 63. Plaintiff incorporates by reference the allegations contained in the paragraphs above
26 as if set forth fully herein.

27 64. Plaintiff brings this claim individually and on behalf of the Class and Subclass
28 members against Defendants.

1 65. Defendants have been unjustly enriched in retaining the revenues derived from
2 Plaintiff and the Class Members’ purchases of the Drives. Retention of those monies under these
3 circumstances is unjust and inequitable because Defendants failed to disclose that the Drives are
4 defective and pose a significant risk of sudden data loss within months or even days of purchase
5 and use, rendering the Drives unfit for sale. Defendants’ misrepresentations and/or material
6 omissions caused injuries to Plaintiff and the Class Members because they would not have
7 purchased the Drives if the true facts were known.

8 66. Because Defendants’ retention of the non-gratuitous benefits conferred on them by
9 Plaintiff and the Class and Subclass Members is unjust and inequitable, Defendants must pay
10 restitution to Plaintiff and the Class and Subclass Members for its unjust enrichment, as ordered by
11 the Court.

COUNT III
Violation of California’s Unfair Competition Law (“UCL”),
Cal. Bus. & Prof. Code §§ 17200, et seq.

14 67. Plaintiff incorporates by reference the allegations contained in the paragraphs above
15 as if set forth fully herein.

16 68. Plaintiff brings this claim individually and on behalf of the California Subclass
17 members against Defendants.

18 69. The UCL prohibits unfair competition in the form of “any unlawful, unfair, or
19 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
20 act.” Cal. Bus. & Prof. Code § 17200. A practice is unfair if it (1) offends public policy; (2) is
21 immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to consumers.
22 The UCL allows “a person who has suffered injury in fact and has lost money or property” to
23 prosecute a civil action for violation of the UCL. Cal. Bus. & Prof. Code § 17204. Such a person
24 may bring such an action on behalf of himself or herself and others similarly situated who are
25 affected by the unlawful and/or unfair business practice or act.

26 70. As alleged above, Defendants have committed unlawful, fraudulent, and/or unfair
27 business practices under the UCL by: (a) representing that Defendants’ Products have certain
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1 characteristics that they do not, in violation of Cal. Civil Code § 1770(a)(5); (b) advertising goods
2 and services with the intent not to sell them as advertised, in violation of Cal. Civil Code §
3 1770(a)(9).

4 71. Defendants' conduct has the capacity to mislead a significant portion of the general
5 consuming public or of targeted consumers, acting reasonably in the circumstances.

6 72. Defendants' conduct has injured Plaintiff and the Class he seeks to represent in that
7 he paid money for a product that he would not have purchased but for Defendants' failure to
8 disclose or remedy the defect. Such injury is not outweighed by any countervailing benefits to
9 consumers or competition. Indeed, no benefit to consumers or competition results from
10 Defendants' conduct.

11 73. Pursuant to California Business and Professional Code § 17203, Plaintiff and the
12 Class members seek an order of this Court that includes, but is not limited to, an order requiring
13 Defendant to (a) provide restitution to Plaintiff and the other Class members; (b) disgorge all
14 revenues obtained as a result of violations of the UCL; and (c) pay Plaintiff and the Class
15 members' attorneys' fees and costs.

16 74. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy
17 at law if, for instance, damages resulting from their purchase of the Product is determined to be an
18 amount less than the premium price of the Product. Without compensation for the full premium
19 price of the Product, Plaintiff would be left without the parity in purchasing power to which they
20 are entitled. Further, Plaintiff and the Class members have or will have suffered data loss. All of
21 the memories and work product that has been lost may be retrievable, at a cost. This cost goes
22 beyond merely the purchase price of the product, but to fully compensate Plaintiff and the Class
23 members for their loss justice dictates that Defendants pay for data retrieval services for all those
24 affected.

25 75. Injunctive relief is also appropriate, and indeed necessary, to require Defendants to
26 provide full and accurate disclosures regarding the Product so that Plaintiff and Class members can
27 reasonably rely on Defendants' packaging as well as those of Defendants' competitors who may
28 then have an incentive to follow Defendants' deceptive practices, further misleading consumers.

1 76. Restitution and/or injunctive relief may also be more certain, prompt, and efficient
2 than other legal remedies requested herein. The return of the full premium price, payment for data
3 retrieval services, and an injunction requiring Defendant to recall the Drives and warn consumers
4 about the defect, will ensure that Plaintiff and the Class are in the same place they would have been
5 in had Defendants’ wrongful conduct not occurred, *i.e.*, in the position to make an informed
6 decision about the purchase of the Drives absent omissions with the full purchase price at their
7 disposal.

8 **COUNT IV**
9 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
10 **Cal. Civ. Code §§ 1750, *et seq.***
11 **(Injunctive Relief Only)**

12 77. Plaintiff incorporates by reference the allegations contained in the paragraphs above
13 as if set forth fully herein.

14 78. Plaintiff brings this claim individually and on behalf of the California Subclass
15 members against Defendants.

16 79. Plaintiff and the California Subclass members are consumers within the meaning of
17 Cal. Civ. Code § 1761(d).

18 80. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
19 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
20 have or that a person has a sponsorship, approval, status, affiliation, or connection which she or she
21 does not have.”

22 81. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a
23 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
24 another.”

25 82. Cal. Civ. Code § 1770(a)(9) prohibits “advertising goods or services with intent not
26 to sell them as advertised.”

27 83. Defendants violated Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9) by intentionally
28 and misleadingly representing that its Drives are capable and dependable solid-state drives, a fact
which was material to Plaintiff and reasonable consumers.

1 84. Defendants’ misrepresentations and omissions deceived, and have a tendency and
2 ability to deceive, reasonable consumers and the general public.

3 85. Defendants have exclusive or superior knowledge of the cause of the defect and
4 which of its products are affected, which was not known to Plaintiff or the California Subclass
5 members.

6 86. Plaintiff and the California Subclass Members have suffered harm as a result of
7 these violations of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*
8 (“CLRA”) because they have incurred charges and/or paid monies for the Products that they
9 otherwise would not have incurred or paid. Had Plaintiff and the California Subclass members
10 known that the Drives were fatally defective and had a significant risk of spontaneous data loss,
11 they would not have purchased them.

12 87. Plaintiff, on behalf of himself and all other members the California Subclass, seeks
13 an injunction prohibiting Defendants from continuing their unlawful practices in violation of the
14 CLRA.

15 88. In compliance with the provisions of California Civil Code § 1782, Plaintiff sent
16 written notice to Defendants on August 17, 2023, informing Defendants of his intention to seek
17 damages under California Civil Code § 1750. The letter was sent via certified mail, return receipt
18 requested, advising Defendants that they were in violation of the CLRA and demanding that they
19 cease and desist from such violations and make full restitution by refunding the monies received
20 therefrom. The letter expressly stated that it was sent on behalf of Plaintiff and “all other persons
21 similarly situated.” Accordingly, if Defendants fail to take corrective action within 30 days of
22 receipt of the demand letter, Plaintiff will amend his complaint to include a request for damages as
23 permitted by Civil Code § 1782(d) for Defendants’ violations of the CLRA.

24 **COUNT V**
25 **Violation of California’s False Advertising Law (“FAL”),**
26 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

27 89. Plaintiff incorporates by reference the allegations contained in the paragraphs above
28 as if set forth fully herein.

1 90. Plaintiff brings this claim individually and on behalf of the California Subclass
2 members against Defendants.

3 91. Defendants' acts and practices, as described herein, have deceived and/or are likely
4 to continue to deceive California Subclass members and the public. As described above, and
5 throughout this Complaint, Defendants misrepresented that their Drives were dependable and
6 capable solid-state drives. Such representations are not true because the Drives have an outsized
7 risk of catastrophic failure resulting in full data loss.

8 92. By its actions, Defendants disseminated uniform advertising regarding its Drives to
9 and across California. The advertising was, by its very nature, unfair, deceptive, untrue, and
10 misleading within the meaning of California's False Advertising Law, Cal. Bus. & Prof. Code §§
11 17500, *et seq.* (the "FAL"). Such advertisements were intended to and likely did deceive the
12 consuming public for the reasons detailed herein.

13 93. The above-described false, misleading, and deceptive advertising Defendants
14 disseminated continues to have a likelihood to deceive in that Defendants continues to
15 misrepresent, without qualification, that the Drives are dependable and fit for use as data storage
16 devices.

17 94. In making and disseminating these statements, Defendants knew, or should have
18 known, their advertisements were untrue and misleading in violation of California law. Defendants
19 know that their Drives are seriously defective, yet do not disclose this fact to consumers.

20 95. Plaintiff and the California Subclass members purchased the Drives based on
21 Defendants' misrepresentations and omissions.

22 96. Defendants' misrepresentations and non-disclosures of the material facts described
23 and detailed herein constitute false and misleading advertising and, therefore, constitute a violation
24 of the FAL.

25 97. As a result of Defendants' wrongful conduct, Plaintiff and the California Subclass
26 members lost money in an amount to be proven at trial. Plaintiff and the California Subclass are
27 therefore entitled to restitution as appropriate for this cause of action.

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98. Plaintiff and the California Subclass members seek all monetary and non-monetary relief allowed by law, including restitution of all profits stemming from Defendants’ unfair, unlawful, and fraudulent business practices; declaratory relief; reasonable attorneys’ fees and costs under Cal. Code Civ. Proc. § 1021.5; and other appropriate equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- (a) For an order certifying the nationwide Class and the California Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Subclass and Plaintiff’s attorneys as Class Counsel to represent the Class and California Subclass members;
- (b) For an order declaring the Defendants’ conduct violates the statutes referenced herein;
- (c) For an order finding in favor of Plaintiff, the nationwide Class, and the California Subclass on all counts asserted herein;
- (d) For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Class and the California Subclass reasonable attorneys’ fees and expenses and costs of suit.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

1 Dated: August 17, 2023

BURSOR & FISHER, P.A.

2 By: /s/ Neal J. Deckant
3 Neal J. Deckant

4 Neal J. Deckant (State Bar No. 322946)
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Attorneys for Plaintiff

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Neal J. Deckant, declare as follows:

- 1. I am counsel for Plaintiff, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.
- 2. The complaint filed in this action is filed in the proper place for trial because many of the acts and transactions giving rise to this action occurred in this District, and because Plaintiff Saif Jafri resides in this District.
- 3. Plaintiff Saif Jafri is a resident of Buena Park, California.
- 4. Defendant Western Digital Corporation is a Delaware company with its principal place of business in San Jose, California.
- 5. Defendant SanDisk LLC is a Delaware company with its principal place of business in Milpitas, California

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, executed on August 17, 2023, at Walnut Creek, California.



Neal J. Deckant