

LAW OFFICE OF FRANCIS J. FLYNN, JR.  
Francis J. Flynn, Jr.  
422 South Curson Avenue  
Los Angeles, California 90036-3169  
T: 314-662-2836  
F: 1-855-710-7706  
E: casey@lawofficeflynn.com

*Attorneys for Plaintiffs and the Proposed Class*  
*[Additional Counsel on Signature Page]*

**UNITED STATES OF AMERICA  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JOHN DINAN, VAMSI CHODAY, and  
BREN COHEE, individually and on behalf  
of all others  
similarly situated,

Plaintiffs,

v.

SANDISK LLC,

Defendant.

Case No.: 5:18-cv-05420-BLF

**AMENDED CLASS ACTION**

**COMPLAINT FOR:**

- (1) BREACH OF CONTRACT**
- (2) VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.**
- (3) VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CALIFORNIA CIVIL CODE § 1750, ET SEQ.**
- (4) FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17500, ET SEQ.**

**JURY TRIAL DEMANDED**

COMES NOW Plaintiffs John Dinan (hereinafter "Plaintiffs"), individually and on behalf

1 of all others similarly situated, by and through undersigned counsel, and hereby bring Plaintiffs'  
2 Amended Class Action Complaint against SANDISK LLC, (hereinafter referred to as  
3 “Defendant” or “Sandisk”, alleging, upon personal knowledge as to Plaintiffs’ individual actions  
4 and upon information and belief and/or counsel’s investigations as to all other matters, the  
5 following:

6 **I. INTRODUCTION**

7  
8 1. This class action seeks compensatory damages, restitution, disgorgement of  
9 profits, costs of suit, actual damages, attorneys’ fees, costs, declaratory judgment, injunctive  
10 relief, and any other relief that this Court deems just and proper arising from Defendant’s breach  
11 of contract, and unfair, unlawful, unethical, fraudulent, misleading, unconscionable, and/or  
12 deceptive business policies and practices related to Defendant’s manufacturing, advertising,  
13 marketing, and/or sales of its flash memory in the form of USB<sup>1</sup> flash drives, also known as thumb  
14 drives, data sticks, JumpDrives, pen drives, gig sticks, flash sticks, disk keys, memory sticks,  
15 USB sticks, or USB memory.  
16

17 2. Plaintiffs shall refer to the SanDisk Products at issue in this suit as “USB Drives”  
18 or “USB Flash Drives”.

19 **II. PARTIES**

20 **A. Plaintiffs**

21 1. Plaintiff John Dinan is a citizen of the state of California, residing in the city of  
22 Los Angeles, California. Plaintiff purchased a SanDisk 64 GB iXPAND Flash Drive USB 3.0 at  
23 a retail store. Plaintiff used it on a computer device that utilizes the binary system for defining  
24 gigabytes. At no time did Plaintiff know that there was a difference between the decimal and  
25

26  
27 <sup>1</sup> “USB” refers to a Universal Serial Bus port in a computer, where the drive is inserted into the  
28 computer.

1 binary system and believed that 64 GB meant the same amount of memory when used for his  
2 computer and flash drive. Additionally, Plaintiff did not see an \* by GB on the packaging when  
3 he made the purchase at the retail store.

4 2. Plaintiff Vamsi Choday is a citizen of the state of Oregon, residing in the city of  
5 Portland, Oregon. Choday bought a SanDisk 256 GB thumb drive to transfer files off his  
6 computer that utilizes the binary system for defining gigabytes. Because the drive was not binary  
7 256 GB, he had to buy another drive to finish the transfer of computer files. At no time did  
8 Plaintiff know that there was a difference between the decimal and binary system and believed  
9 that 64 GB meant the same amount of memory when used for their computer and flash drive.  
10 Plaintiff did not see an \* by GB on the packaging when he made the purchase at the retail store.

11 3. Plaintiff Bren Cohee is a citizen of the state of California, residing in the city of  
12 Los Angeles, California. Plaintiffs purchased a SanDisk Ultra Plus 64GB microSDXC UHS-I  
13 Card. Plaintiff used it on a computer device that utilizes the binary system for defining gigabytes.  
14 At no time did Plaintiff know that there was a difference between the decimal and binary system  
15 and believed that 64 GB meant the same amount of memory when used for his device and flash  
16 drive. Plaintiff did not see an \* by GB on the packaging when he made the purchase at the retail  
17 store.

18  
19  
20 **B. Defendant**

21 4. SanDisk LLC is a leading provider of flash memory products like PCIe Flash,  
22 SSDs, server storage solutions and removable memory cards and USB drives.<sup>2</sup> Defendant  
23 SanDisk LLC is a limited liability corporation formed under the laws of the state of Delaware,  
24 having its principal place of business at 5601 Great Oaks Parkway, San Jose, California 95119.  
25 The sole member of Defendant SanDisk is Western Digital Technologies, Inc. Western Digital  
26

27  
28 <sup>2</sup> <https://www.sandisk.com/about/company>

1 Technologies, Inc. is organized under the laws of Delaware and whose principal place of business  
2 is located at 5601 Great Oaks Parkway, San Jose, California 95119. Western Digital  
3 Technologies Inc. is, therefore, a citizen of the States of Delaware and California. Sandisk LLC  
4 is, therefore, a citizen of the States of Delaware and California. Sandisk LLC can be served  
5 through its registered agent at Corporation Service Company Which Will Do Business in  
6 California as CSC – Lawyers Incorporating Service 2710 Gateway Oakes Drive, Suite 150N  
7 Sacramento California 95833. Western Digital Technologies, Inc. is a wholly owned subsidiary  
8 of Western Digital Corporation.  
9

### 10 **III. JURISDICTION & VENUE**

11 5. This Court has original jurisdiction over this action under the Class Action  
12 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original  
13 jurisdiction because (a) the aggregated claims of the putative members of the Classes exceed \$5  
14 million, exclusive of interest and costs; (b) there are at least 100 members of the putative Classes;  
15 and (c) at least one of the members of each of the proposed Classes is a citizen of a different state  
16 than Defendant.  
17

18 6. This Court has personal jurisdiction over Defendant because Defendant, directly  
19 or through an agent, has transacted business and engaged in tortious and fraudulent conduct, by  
20 affirmative acts or omissions, in the State of California such that it reasonably anticipated being  
21 subject to personal jurisdiction before the courts of this State. Defendant's agents have advertised,  
22 marketed, and/or sold USB Flash Drives in California, including in this District. Defendant has  
23 sufficient minimum contacts with this State, and/or sufficiently availed itself to the markets of  
24 this State through its advertising, marketing, and sale within this State to render the exercise of  
25 jurisdiction by this Court permissible. Further, this Court has personal jurisdiction over  
26 Defendant because its Internet websites allow consumers to order and ship products anywhere in  
27

1 the United States, including this District.<sup>3</sup> Defendant conducts business throughout the United  
 2 States, including this District.

3 7. Venue is proper in this Court because Defendant does business and maintains its  
 4 headquarters in this District.

#### 5 **IV. GENERAL FACTUAL ALLEGATIONS**

##### 6 **OVERVIEW OF USB DRIVES**

7  
 8 8. USB Drives provide supplemental memory storage for electronic files used in a  
 9 computer or other electronic device by inserting the USB Drive into the USB port. After insertion,  
 10 the computer's operating system recognizes the USB Drive as a storage medium and allows the  
 11 user to store files onto the USB Drive.

12 9. Every USB Drive manufactured, advertised, marketed, and/or sold by Defendant  
 13 has a specific, particular memory capacity for storing digital information.

14 10. During the Class Period, Defendant advertised, marketed, and/or sold a number of  
 15 USB Flash Drives in varying sizes, including what it represented as memory sizes of 256 GB,  
 16 128 GB, 64 GB, 32 GB, 16 GB<sup>4</sup> and 8 GB.<sup>5</sup>

17  
 18 11. At all relevant times, Defendant intentionally misrepresented the amount of the  
 19 memory storage contained on the USB Flash Drives in their marketing, advertising, and/or  
 20 packaging of their USB Flash Drives.

##### 21 **WHAT IS A GB?**

22 12. This case stems from Defendant's intentional misrepresenting the storage  
 23

24 <sup>3</sup> See, e.g., [https://shop.sandisk.com/store?Action=pd&Cruzer-Fit-USB-Flash-Drive-8GB=&Locale=en\\_US&SiteID=sdiskus&productID=235933700](https://shop.sandisk.com/store?Action=pd&Cruzer-Fit-USB-Flash-Drive-8GB=&Locale=en_US&SiteID=sdiskus&productID=235933700)

25 <sup>4</sup> <https://www.sandisk.com/home/usb-flash> (last visited June 22, 2018).

26 <sup>5</sup> [https://www.amazon.com/s/gp/search/ref=sr\\_nr\\_p\\_n\\_size\\_browse-bin\\_2?fst=as%3Aoff&rh=n%3A172282%2Cn%3A541966%2Cn%3A1292110011%2Cn%3A3151491%2Ck%3Asandisk+8+gb+usb+flash+drive%2Cp\\_n\\_size\\_browse-bin%3A1259714011%7C1259713011&keywords=sandisk+8+gb+usb+flash+drive&ie=UTF8&qid=1529688631&rnid=1259751011](https://www.amazon.com/s/gp/search/ref=sr_nr_p_n_size_browse-bin_2?fst=as%3Aoff&rh=n%3A172282%2Cn%3A541966%2Cn%3A1292110011%2Cn%3A3151491%2Ck%3Asandisk+8+gb+usb+flash+drive%2Cp_n_size_browse-bin%3A1259714011%7C1259713011&keywords=sandisk+8+gb+usb+flash+drive&ie=UTF8&qid=1529688631&rnid=1259751011) (last visited June 22, 2018).

1 capacity, which are represented in “GBs,” of its USB Flash Drives. GB is the acronym for  
2 Gigabyte (1024 megabytes).<sup>6</sup>

3 13. Merriam Webster Diction defines a “gigabyte” as 1024 megabytes or  
4 1,073,741,824 bytes.”<sup>7</sup>

5 14. Additionally, the Sedona Conference Journal, Vol. 15 recognizes that a GB is  
6 based off of the binary calculation, not the decimal calculation. See, Exhibit C.

7 15. Dictionary.com defines a “gigabyte” as a measure of storage capacity equal to  $2^{30}$   
8 (1024) bytes.”<sup>8</sup>

9 16. The Oxford Dictionary defines a Gigabyte as “A unit of information equal to one  
10 thousand million (10 ) or, strictly,  $2^3$  bytes.”<sup>9</sup>

11 17. The dictionary definition of Gigabyte is also consistent with virtually all  
12 computers’ operating systems’ calculation and representation of file sizes and storage needs.

13 18. In particular, and as explained in more detail herein, computer users are presented  
14 with the base-two counting system whenever they look at the size of files stored on their hard disk  
15 drive or storage medium, whether they are using the Windows, Linux, Apple (except Mac OS X  
16 version 10.6 and later) or any other operating systems.

17 19. For example, users of the Microsoft Windows operating system (who comprise the  
18 majority of all computer users as indicated below) will see a list of files contained in a particular  
19 folder, showing the total size of the folder and the file size of each file as a number of “KB” or  
20 kilobytes. If the user clicks on the “properties” for a particular file, the user will then see the same  
21 size given in “MB” or megabytes and “bytes.”

22  
23  
24  
25  
26 <sup>6</sup> According to <https://acronyms.thefreedictionary.com/GB>,  
27 <sup>7</sup> <https://www.merriam-webster.com/dictionary/gigabyte> (last visited June 22, 2018).

28 <sup>8</sup> <http://www.dictionary.com/browse/gigabyte> (last visited June 22, 2018).

<sup>9</sup> See, <https://en.oxforddictionaries.com/definition/gigabyte> (last visited June 22, 2018).

1           20. Each of these numbers is computed using the base-two system. For example, if a  
2 particular file appears in the list as “2,088 KB,” the properties screen will show “2.03 MB  
3 (2,138,1124 bytes).”<sup>10</sup>

4           21. As GB can have two meanings, GB as used by Defendant is an ambiguous term.  
5 That on some of the packaging there may appear an asterisk next to GB, but on other areas visible  
6 to the consumer there does not appear to be an asterisk, renders GB ambiguous. That it is defined  
7 as based on the decimal system in one area does not change the fact that it is an inherently  
8 ambiguous term as used in other places.

9           22. Additionally, the asterisk does not clear up the ambiguity because indicating that  
10 1 GB = 1,000,000,000 bites does not mean anything to a reasonable consumer, especially when  
11 they are buying a flash drive for a device that uses the binary system for measuring storage.  
12

13           23. Defendant’s is aware that its USB flash drive is used with computers and devices  
14 that employ a binary system.

15           **DEFENDANT’S KNOWLEDGE THAT ITS USB FLASH DRIVE WILL BE USED ON**  
16           **COMPUTER DEVICES THAT USE A BINARY SYSTEM OF MEASUREMENT.**  
17

18           24. In its patent applications for these USB Flash Drives, Defendant used a binary  
19 system. *See*, Exhibit D, E, F, and G.

20           25. In 2001, the D.C. District Court found that Microsoft has a greater than 95% share  
21 Intel-compatible PC operating systems. *United States v. Microsoft Corp.*, 346 U.S. App. D.C.  
22 330, 253 F.3d 34, 36 51 (2001).

23           26. As of 2019, Microsoft operating system still have 75% share of the market.  
24

25           \_\_\_\_\_

26 <sup>10</sup> The reason is that 2,138,112 bytes divided by 1,024 (2<sup>10</sup>) equals 2,088 KB, and 2,088 kilobytes  
27 divided by 1,024 equals 2.03 MB. If the number had been computed in base-ten instead of base-  
28 two then 2,138,122 bytes would be shown as 2,138 KB instead of 2,088 KB, and as 2.14MB  
instead of 2.03MB.

1 <https://www.statista.com/statistics/218089/global-market-share-of-windows-7/> (75% share of the  
2 market as of 2019). ([https://www.theverge.com/2019/1/2/18164916/microsoft-windows-10-](https://www.theverge.com/2019/1/2/18164916/microsoft-windows-10-market-share-passes-windows-7-statistics)  
3 [market-share-passes-windows-7-statistics](https://www.theverge.com/2019/1/2/18164916/microsoft-windows-10-market-share-passes-windows-7-statistics), last viewed 6/20/2019)

4 Furthermore, macOS computers, which employs the decimal system, is less than 10% of the  
5 market. Indeed, “[e]lsewhere in Net Applications' May numbers, the overall user share of macOS  
6 slid by a tenth of a percentage point to 9.3%, the lowest mark for Apple's desktop operating system  
7 in nearly a year.” ([https://www.computerworld.com/article/3199373/windows-by-the-numbers-](https://www.computerworld.com/article/3199373/windows-by-the-numbers-windows-10-passes-the-50-share-mark.html)  
8 [windows-10-passes-the-50-share-mark.html](https://www.computerworld.com/article/3199373/windows-by-the-numbers-windows-10-passes-the-50-share-mark.html). last viewed 6/20/2019)

10 27. In analyzing the specific operating system (Windows 10, 8, 7, XP, etc.), Apple  
11 only has about 9% of the market.<sup>11</sup>

12 28. Accordingly, Defendant is fully aware that its USB flash drives will be used on  
13 computers and other devices that employ a binary system for measurement.

14 **DEFENDANT’S UNFAIR, UNLAWFUL, AND/OR**  
15 **DECEPTIVE BUSINESS PRACTICES**

16  
17 29. As a matter of fact, Defendant’s USB Flash Drives contain materially less GBs  
18 than stated. Defendant fails to meaningfully, adequately, and/or conspicuously disclose, however,  
19 that its USB Flash Drives contain materially less GBs than the number of GBs stated on the

20  
21 <sup>11</sup> <https://netmarketshare.com/operating-system-market-share.aspx?options=%7B%22filter%22%3A%7B%22%24and%22%3A%5B%7B%22deviceType%22%3A%7B%22%24in%22%3A%5B%22Desktop%2FDesktop%2FDesktop%22%5D%7D%7D%5D%7D%2C%22dateLabel%22%3A%22Trend%22%2C%22attributes%22%3A%22share%22%2C%22group%22%3A%22platformVersion%22%2C%22sort%22%3A%7B%22share%22%3A-1%7D%2C%22id%22%3A%22platformsDesktopVersions%22%2C%22dateInterval%22%3A%22Monthly%22%2C%22dateStart%22%3A%222018-06%22%2C%22dateEnd%22%3A%222019-05%22%2C%22segments%22%3A%22-1000%22%2C%22plotKeys%22%3A%5B%7B%22platformVersion%22%3A%22Mac%20OS%20X%2010.13%22%7D%2C%7B%22platformVersion%22%3A%22Mac%20OS%20X%2010.14%22%7D%2C%7B%22platformVersion%22%3A%22Mac%20OS%20X%2010.12%22%7D%2C%7B%22platformVersion%22%3A%22Mac%20OS%20X%2010.11%22%7D%5D%7D>  
22 (Last viewed: June 21, 2019)



1 advertising and/or packaging.

2 30. The difference between Sandisk's USB Flash Drives' advertised memory and their  
3 actual memory is significant as set forth in the below chart:

4

5 <b>Number of 6 GBs 7 Advertised</b>	8 <b>Actual Storage 9 Capacity (GBs)</b>	10 <b>Difference in GB between 11 Advertised Space and Actual 12 Space</b>	13 <b>Difference 14 (Percentage)</b>
15 4	16 3.73	17 0.27	18 0.0675
19 8	20 7.45	21 0.55	22 0.06875
23 16	24 14.9	25 1.1	26 0.06875
27 32	28 29.8	2.2	0.06875
64	59.6	4.4	0.06875
128	119.21	8.79	0.068671875
256	238.42	17.58	0.068671875

14 31. As set forth above, the difference in GBs in the amount advertised and the actual  
15 space received increases the more storage Defendant promises.

16 32. To further mislead Plaintiffs and the Class and Subclass, Defendant sells USB  
17 Flash Drives in sizes that are consistent with the base-two system, i.e., it sells USB Flash Drives  
18 in 8 GB, 16 GB, 32 GB, 64 GB, 128 GB, and 256 GB sizes. This is done to mislead the public  
19 because Defendant wants the public to assume that the size of the USB Drive that they are  
20 purchasing is consistent with the dictionary definition, the average consumer's understanding,  
21 and the way that computers calculates storage space.

22 33. Plaintiffs' situation is demonstrative. Plaintiffs were shocked to learn that there is  
23 approximately 6.7% less storage capacity on the device than what Defendant conspicuously  
24 advertised to him.

25 34. Moreover, this is not a matter of merely getting less than what one paid for. For  
26 example, a 256 GB USB Flash Drive is inadequate to expand the PlayStation storage capacity  
27  
28

1 because PlayStation requires 250 GB to expand its storage capacity and Defendant’s 256 GB USB  
2 Flash Drive only contains 238.42 GBs of storage space. Thus, someone purchasing a 256 GB  
3 USB Flash Drive for that purpose – a size that would outwardly appear to be perfect for that  
4 application – would be unable to use it at all.

5 **DEFENDANT ASSIGNS AN ARBITRARY DEFINITION TO GB IN EXTREMELY**  
6 **FINE PRINT ON THE BACK OF THE PACKAGING**

7  
8 35. On the front of Defendant’s packaging, Defendant conspicuously represents in  
9 font that is larger and in a different color than surrounding text and is separate and apart from  
10 other words, the number of GBs the USB Flash Drive purportedly contains.

11 36. Defendant does not meaningfully, adequately, or conspicuously disclose that  
12 Defendant’s product actually contains at least 6.7% less storage than it represents on the front of  
13 the packaging. All Defendant does is place fine print on the back of its packaging that arbitrarily  
14 defines GB to mean less than 1.024 billion bytes, i.e., one billion bytes.

15  
16 37. Thus, Defendant knows that a GB is 1.024 billion bytes, but defines it in fine print  
17 as one billion bytes, thereby shorting the consumer out of at least 6.7% storage.

18 38. Defendant does not even direct consumer’s attention to the back of the packaging  
19 to the inadequate “disclosure.”

20 39. Furthermore, though this Court took judicial notice that “The packaging also  
21 conspicuously displays a disclosure on the front near the “64 GB” stating that the USB drive is  
22 “Made for iPhone | iPad.” Id. Elsewhere on the front, the package states that the drive is “For  
23 iPhone, iPad, and computers.” Id.”, the packaging also states that the device is compatible with  
24 various Windows operating systems.

25  
26 40. Furthermore, although the packaging for John Dinan states “1 GB = 1,000,000,000  
27 bytes,” it is in fine print and is not conspicuously displayed for a reasonable consumer to see.

1 Additionally, 1 GB = 1,000,000,000 bytes has to be read in the context of the other language on  
2 the packaging, which states that the device is compatible with Windows operating systems.

3 41. Additionally, Bren Cohee's device itself, which is clear and conspicuous, does not  
4 bear an asterisk at all.

5 **DEFENDANT'S METHOD OF DETERMINING MEMORY SIZE IS INCONSISTENT**  
6 **WITH THE BINARY STANDARD ON WHICH ALL DIGITAL FILES ARE BASED**  
7

8 42. In binary computing, a computer counts in base-two. Each column goes only from  
9 0 to 1. Thus, each column represents a factor of 2, such as  $2^1$ ,  $2^2$ ,  $2^3$ ,  $2^4$ ,  $2^5$ , and so forth

10 43. Except for the file manager of Mac OS X version 10.6 and later, all  
11 computer/digital processors sold everywhere report available storage using base-two calculations.  
12 These include personal computers, PDAs, digital cameras, cellular telephones, MP3 players,  
13 gaming systems such as PlayStation and Xbox, and all other devices that use flash memory in one  
14 form or another.

15 44. Memory storage is designated in sizes that equal an exponent of the number two.  
16 Every group of eight ( $2^3$ ) bits is called a "byte." The term "byte" was used instead of "bite" to  
17 avoid confusion if the "e" was inadvertently left off the end.

18 45. Upon information and belief, Defendant later changed its method to be able to  
19 overstate the amount of memory contained on its USB Flash Drive.  
20

21 **PLAINTIFFS WERE MISLED AND DECEIVED BY DEFENDANT**  
22

23 46. Plaintiffs purchased a Sandisk USB Flash Drive primarily for personal, family, or  
24 household purposes.

25 47. Plaintiffs have been damaged as a result of Defendant's unfair, unlawful,  
26 unethical, deceptive, unconscionable, and/or fraudulent business practices as set forth more fully  
27 throughout the complaint.  
28



1 size of its USB Flash Drives, Plaintiffs, the Class, and the Subclass would not have been  
 2 purchased Defendant's USB Flash Drives or would have only purchased Defendant's USB Flash  
 3 Drives at a lower price.

4 54. The amounts overpaid can be computed by, among other things, comparing the  
 5 prices that Defendant charges for different sized USB Flash Drives, which reflects their  
 6 incremental price for each additional unit of memory storage.

7 55. For example, Defendant sells its "16 GB" hard drive for \$19.99. Since the 16 GB  
 8 USB Flash Drive really only contains 14.9 GBs of memory, the cost per GBs is \$1.34 per GB.  
 9

10 56. Thus, for each USB Flash Drive device purchased, Plaintiffs and the Class and  
 11 Subclass Members were damaged as follows:

12 Number of 13 GBs 14 Advertised	Actual Storage Capacity (GBs)	Difference in GB between Advertised Space and Actual Space	Approximate Amount of Damage to Consumer
15 4	3.73	0.27	\$0.36
16 8	7.45	0.55	\$0.74
17 16	14.9	1.1	\$1.47
18 32	29.8	2.2	\$2.95
19 64	59.6	4.4	\$5.90
20 128	119.21	8.79	\$11.78
21 256	238.42	17.58	\$23.56

22 57. Defendant does not meaningfully, adequately, and/or conspicuously make  
 23 understandable disclosures to Plaintiffs, the Class or Subclass.

## 24 VI. CLASS ACTION ALLEGATIONS

25 58. Plaintiffs bring this action and seek to certify and maintain it as a class action under  
 26 Fed. R. Civ. P. 23, individually and on behalf of the following Class:

27 **The Class (the "Class")**

1 All individuals and entities in the United States who purchased a Sandisk  
2 USB Drive within the applicable statutes of limitations preceding the filing  
3 of this lawsuit.

4 **The Subclass (the “Subclass”)**

5 All individuals in the State of California who purchased a Sandisk USB  
6 Drive within the applicable statutes of limitations preceding the filing of  
7 this lawsuit.

8 59. Excluded from the Class are: (a) Defendant and any entities in which Defendant  
9 has a controlling interest; (b) Any entities in which Defendant’s officers, directors, or employees  
10 are employed and any of the legal representatives, heirs, successors, or assigns of Defendant; (c)  
11 All current employees of Defendant; (d) The Judge(s) to whom this case or any transferred case  
12 is assigned and any member of the Judges’ immediate family and any other judicial officer  
13 assigned to this case or any transferred case; (f) All governmental entities; (g) anyone who makes  
14 a timely election to be excluded from the Class.

15 60. Excluded from the Subclass are: (a) Defendant and any entities in which Defendant  
16 has a controlling interest; (b) Any entities in which Defendant’s officers, directors, or employees  
17 are employed and any of the legal representatives, heirs, successors, or assigns of Defendant; (c)  
18 All current employees of Defendant; (d) The Judge(s) to whom this case or any transferred case  
19 is assigned and any member of the Judges’ immediate family and any other judicial officer  
20 assigned to this case or any transferred case; (e) Any attorneys representing Plaintiffs or the  
21 Subclass; (f) All governmental entities; (g) anyone who makes a timely election to be excluded  
22 from the Class.

24 61. Plaintiffs reserve the right to modify or amend the definitions of the proposed  
25 Class or Subclass and/or to add more Subclasses if necessary before the Court determines whether  
26 certification is appropriate and as the Court may otherwise allow.

27 62. This case is properly brought as a class action under Fed. R. Civ. P. 23(a), (b)(2),  
28

1 (b)(3), and (c)(4), and all requirements therein are met for the reasons set forth herein.

2 63. The claims of all Class and Subclass members derive directly from a single course  
3 of conduct by the Defendant. Defendant have and continue to engage in uniform and standardized  
4 conduct toward the Class and Subclass members. Defendant do not differentiate, in degree of care  
5 or candor, in their actions or inactions, or the content of their statements or omissions, among  
6 individual Class and Subclass members. Accordingly, Plaintiffs bring this lawsuit as a class action  
7 on Plaintiffs' own behalves and on behalf of all other persons similarly situated pursuant under  
8 Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy,  
9 predominance, and superiority requirements of these provisions.  
10

11 64. Certification of Plaintiffs' claims is appropriate because Plaintiffs can prove the  
12 elements of Plaintiffs' claims on a class-wide basis using the same evidence as would be used to  
13 prove those elements in individual actions alleging the same claim.  
14

15 65. **Numerosity - Fed. R. Civ. P. 23(a)(1).** The Class and Subclass are so numerous  
16 that joinder of all members is impracticable. While the exact number is not known at this time,  
17 it is generally ascertainable by appropriate discovery, and it is believed the Class and Subclass  
18 includes thousands, if not millions, of members. The numerosity requirement is, therefore,  
19 satisfied. Undoubtedly, individual joinder in this case is impracticable. More than one thousand  
20 Class and Subclass members is sufficient to satisfy numerosity under Fed. R. Civ. P. 23(a)(1).  
21

22 66. **Ascertainability.** The Class and Subclass are each ascertainable because its  
23 members can be readily identified using business records, contracts, and other information kept  
24 by Defendant in the usual course of business and within their control or Plaintiffs and the Class  
25 and Subclass themselves. Plaintiffs anticipate providing appropriate notice to the Class and  
26 Subclass to be approved by the Court after class certification, or pursuant to court order.

27 67. **Commonality and Predominance - Fed. R. Civ. P. 23(a)(2) and (b)(3).** There  
28

1 are several questions of law and fact common to the claims of Plaintiffs and the members of the  
2 Class and Subclass. All of the members of the Class' and Subclass' claims are based upon the  
3 same facts and circumstances. Fed. R. Civ. P. 23(a)(3). The questions of law and fact common to  
4 the members of the Class and Subclass predominate over any questions affecting only individual  
5 members of the Class and Subclass. The resolution of common questions in this case will resolve  
6 the claims of both Plaintiffs and the Class and Subclass. Common questions include, but are not  
7 limited to, the following:

8  
9 a. Whether Defendant unfairly, unethically, unlawfully, falsely, deceptively,  
10 misleadingly, unconscionably, and/or confusingly misrepresented the amount of storage capacity  
11 on the USB Flash Drives it sells in an amount that was materially more than it actually contained;

12 b. Whether Defendant unfairly, unethically, unlawfully, falsely, fraudulently,  
13 deceptively, misleadingly, unconscionably, and/or confusingly induced Plaintiffs and the  
14 Members of the Class and Subclass into purchasing the USB Flash Drives based on omissions,  
15 misrepresentations, and/or false promises regarding the memory capacity of the USB Flash Drives  
16 it sells;

17  
18 c. Whether Defendant unfairly, unethically, unlawfully, falsely, deceptively,  
19 misleadingly, unconscionably, and/or confusingly omitted that the USB Flash Drive is  
20 approximately contains 6.7% less storage capacity than the actual storage capacity;

21 d. Whether Defendant unfairly, unethically, unlawfully, falsely, deceptively,  
22 misleadingly, unconscionably, and/or confusingly omitted that the GBs represented is not the  
23 same as what a computer processing system would read the device as having and that the available  
24 storage is actually approximately 6.7% less;

25  
26 e. Whether Defendant engaged in unfair, unlawful, fraudulent, unethical,  
27 unconscionable, and/or deceptive trade practices by failing to take the steps to adequately disclose  
28



1 the actual storage capacity of the USB Flash Drive compared to the amount advertised on its  
2 packaging and other sales literature;

3 f. Whether Defendant's marketing, sales, and/or other business practices are unfair,  
4 deceptive, unlawful, fraudulent, unconscionable, and/or unethical;

5 g. Whether Defendant breached one or more terms of the contract or agreement;

6 h. Whether GB is unambiguously the common usage of the term (1024 megabytes);

7 i. Whether there is an ambiguity in the terms of the contract or agreement;

8 j. Whether Defendant adequately, meaningfully, conspicuously disclosed to  
9 Plaintiffs and the Class and Subclass that the storage capacity is 6.7% less than what a member  
10 of the Class would understand, believe or think;

11 k. Whether Defendant had a duty to disclose that the storage capacity is  
12 approximately 6.7% less than the amount of GBs identified on the front of the package;

13 l. Whether Plaintiffs and the Class and Subclass are entitled to compensatory, actual,  
14 and/or statutory damages as a result of Defendant's unfair, unlawful, unethical, deceptive,  
15 unconscionable, and/or fraudulent conduct;

16 m. Whether Defendant violated the applicable consumer protection statutes;

17 n. Whether Defendant concealed material facts in its advertising materials and  
18 agreement and/or failed to adequately disclose to Plaintiffs' material facts;

19 o. Whether Defendant has engaged in deceptive acts or practices in connection with  
20 the sales, marketing, and/or manufacturing of the USB Flash Drives;

21 p. Whether Defendant breached one or more agreements with Plaintiffs and the Class  
22 and Subclass Members;

23 q. Whether Defendant was unjustly enriched;

24 r. Whether Defendant's agreement is unconscionable and/or contain unconscionable  
25

1 provisions;

2 s. Whether Plaintiffs and the Class and Subclass are entitled to actual, compensatory,  
3 nominal, statutory, and/or punitive damages;

4 t. Whether the relationships between Defendant on one hand and the Plaintiffs and  
5 the Class and Subclass on the other is governed by California law;

6 u. Whether Defendant violated California law;

7 v. Violating other statutory law of other states; and/or

8  
9 w. Whether Plaintiffs and the Class and Subclass are entitled to injunctive,  
10 declaratory relief, or other equitable relief.

11 2. **Typicality - Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claims are typical of the claims  
12 of the Class and Subclass. The claims of the Plaintiffs and the respective Class and Subclass are  
13 based on the same legal theories and arise from the same unlawful and willful conduct of  
14 Defendant, resulting in the same injury to the Plaintiffs and the respective Class and Subclass.  
15 Plaintiffs and all members of the Class and Subclass are similarly affected by Defendant's  
16 wrongful conduct and were damaged in the same way. Plaintiffs' interests coincide with, and are  
17 not antagonistic to, those of the other Class and Subclass members. Plaintiffs have been damaged  
18 by the same wrongdoing set forth in this Complaint.

19  
20 68. **Adequacy - Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate Class and Subclass  
21 representatives because Plaintiffs have retained counsel competent and experienced in complex  
22 class action litigation; neither Plaintiffs nor Plaintiffs' counsel have any interest adverse to those  
23 of the other members of the Class and Subclass; Plaintiffs are knowledgeable about the subject  
24 matter of this action and will assist counsel to vigorously prosecute this litigation and has or can  
25 acquire adequate financial resources to assure that the interests of the Class and Subclass will not  
26 be harmed. The interests of the members of Class and Subclass will be fairly and adequately  
27

1 protected by Plaintiffs and Plaintiffs' counsel. As such, Plaintiffs meets the adequacy  
2 requirement.

3       **69. Superiority - Fed. R. Civ. P. 23(b)(3).** The class action is superior to other  
4 available means for the fair and efficient adjudication of this dispute. The injury suffered by each  
5 member of the Class, while meaningful on an individual basis, is not of such magnitude as to  
6 make the prosecution of individual actions against Defendant economically feasible. Even if  
7 members of the Class and Subclass themselves could afford such individualized litigation, the  
8 court system could not. In addition to the burden and expense of managing many actions,  
9 individualized litigation presents a potential for inconsistent or contradictory judgments.  
10 Individualized litigation increases the delay and expense to all parties and the court system  
11 presented by the legal and factual issues of the case. By contrast, the class action device presents  
12 far fewer management difficulties and provides the benefits of single adjudication, economy of  
13 scale, and comprehensive supervision by a single court.

14  
15  
16       **70. Policies Generally Applicable to the Class and Subclass. Fed. R. Civ. P.**  
17 **23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to the Class and  
18 Subclass, thereby requiring the Court's imposition of uniform relief to ensure compatible  
19 standards of conduct toward the members of the Class and Subclass, and making final injunctive  
20 relief appropriate with respect to the Class and Subclass as a whole. Defendant's practices  
21 challenged herein apply to and affect the members of the Class and Subclass uniformly, and  
22 Plaintiffs' challenge of those practices hinge on Defendant's conduct with respect to the Class  
23 and Subclass as a whole, not on facts or law applicable only to Plaintiffs.

24  
25       **71. Injunctive and Declaratory Relief is Appropriate - Fed. R. Civ. P. 23(b)(1).**  
26 Defendant has acted, or refused to act on, grounds generally applicable to the Class, thereby  
27 making appropriate final and injunctive relief with respect to the members of the Class and  
28

1 Subclass as a whole.

2 72. The prosecution of separate actions by the individual members of the Class and  
3 Subclass would create a risk of inconsistent or varying adjudication with respect to individual  
4 members of the Class.

5 73. The prosecution of separate actions by individual members of the Class and  
6 Subclass would create a risk of adjudications with respect to them which would, as a practical  
7 matter, be dispositive of the interests of other members of the Class and Subclass not parties to  
8 the adjudications, or substantially impair or impede their ability to protect their interests.

9  
10 74. **Certification of Particular Issues. Fed. R. Civ. P. 23(c)(4).** Issue certification is  
11 also appropriate because the following particular issues (among others) exist that may be brought  
12 or maintained as a class action:

13 a. Whether Defendant unfairly, unethically, unlawfully, falsely, deceptively,  
14 misleadingly, unconscionably, and/or confusingly misrepresented the amount of storage capacity  
15 on the USB Flash Drive;

16  
17 b. Whether Defendant unfairly, unethically, unlawfully, falsely, fraudulently,  
18 deceptively, misleadingly, unconscionably, and/or confusingly induced Plaintiffs and the  
19 Members of the Class and Subclass into purchasing the USB Flash Drive based on omissions,  
20 misrepresentations, and/or false promises;

21 c. Whether Defendant unfairly, unethically, unlawfully, falsely, deceptively,  
22 misleadingly, unconscionably, and/or confusingly omitted that the USB Flash Drive is  
23 approximately contains 6.7% less storage capacity than the actual storage capacity;

24  
25 d. Whether Defendant unfairly, unethically, unlawfully, falsely, deceptively,  
26 misleadingly, unconscionably, and/or confusingly omitted that the GBs represented is not the  
27 same as what a computer processing system would read the device as having and that the available

1 storage is actually approximately 6.7% less;

2 e. Whether Defendant engaged in unfair, unlawful, fraudulent, unethical,  
3 unconscionable, and/or deceptive trade practices by failing to take the steps to adequately disclose  
4 the storage capacity of the USB Flash Drive;

5 f. Whether Defendant's marketing, sales, and/or other business practices are unfair,  
6 deceptive, unlawful, fraudulent, unconscionable, and/or unethical;

7 g. Whether Defendant breached one or more terms of the contract or agreement;

8 h. Whether GB is unambiguously the common usage of the term (1024 megabytes);

9 i. Whether there is an ambiguity in the terms of the contract or agreement;

10 j. Whether Defendant adequately, meaningfully, conspicuously disclosed to  
11 Plaintiffs and the Class and Subclass that the storage capacity is 6.7% less than what you think;

12 k. Whether Defendant had a duty to disclose that the storage capacity is  
13 approximately 6.7% less than the amount of GBs identified on the front of the package;

14 l. Whether Plaintiffs and the Class and Subclass are entitled to compensatory, actual,  
15 and/or statutory damages as a result of Defendant's unfair, unlawful, unethical, deceptive,  
16 unconscionable, and/or fraudulent conduct;

17 m. Whether Defendant violated the applicable consumer protection statutes;

18 n. Whether Defendant concealed material facts in its advertising materials and  
19 agreement and/or failed to adequately disclose to Plaintiffs material facts;

20 o. Whether Defendant has engaged in deceptive acts or practices in connection with  
21 the sales, marketing, and/or manufacturing of the USB Flash Drives;

22 p. Whether Defendant breached one or more agreements with Plaintiffs and the Class  
23 and Subclass Members;

24 q. Whether Defendant was unjustly enriched;



1 USB 3.0.

2 81. Defendant breached the essential terms of its promise by tendering a USB Flash  
3 Drive to Plaintiffs with a storage capacity that was less than 64 GBs or 256 GBs.

4 82. Plaintiffs and members of the Class and Subclass have sustained damages as a  
5 direct and proximate result of Defendant's breach of the agreement.

6 83. Defendant is liable for the losses of Plaintiffs and the Class and Subclass that have  
7 resulted from Defendant's breaches of the parties' contractual agreements.

8  
9 **COUNT II**  
10 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
11 **(California Business & Professions Code §§ 17200, et seq.)**  
12 **(On Behalf of Plaintiffs and the Class and Subclass)**

13 84. Plaintiffs reallege and incorporate by reference all preceding allegations as  
14 though fully set forth herein.

15 85. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200,  
16 et seq., defines unfair business competition to include any "unfair," "unlawful," or "fraudulent"  
17 business act or practice. The Act also provides for injunctive relief, restitution, and disgorgement  
18 of profits for violations.

19 86. Defendant's unlawful, unfair, and/or fraudulent business acts and practices, as  
20 described herein, were and are in violation of the UCL. Defendant's conduct violates the UCL in  
21 the following ways:

22 a. By knowingly and intentionally concealing from Plaintiffs and the other members  
23 of the Class and Subclass material information concerning the USB Flash Drives as set forth  
24 above;

25 b. By violating the FTC;

26 c. By breaching the terms of the Contract or other agreement;  
27

1 d. By violating other California laws, including Cal. Bus. & Prof. Code § 17500, *et*  
2 *seq.*, and Cal. Corp. Code § 25000, *et seq.* (described below); and/or

3 e. Violating other statutory law of other states.

4 87. Defendant's omissions alleged herein caused Plaintiffs and the other Class and  
5 Subclass members to purchase the USB Flash Drive. Had they been aware of the information  
6 omitted by Defendant, Plaintiffs and the other Class and Subclass members would not have  
7 purchased the USB Flash Drive, would have purchased it only at a reduced price, or would have  
8 purchased a USB flash drive with greater GB capacity.  
9

10 88. Defendant's practice is also immoral, unethical, oppressive, or unscrupulous and  
11 causes injury to consumers which outweigh its benefits.

12 89. Accordingly, Plaintiffs and the Class and Subclass members have suffered injury  
13 in fact, including lost money as a result of Defendant's unlawful, unfair, and fraudulent business  
14 acts and/or practices.

15 90. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
16 by Defendant, under Cal. Bus. & Prof. Code § 17200.  
17

18 91. Plaintiffs request that this Court enter such orders or judgments as may be  
19 necessary to enjoin Defendant from continuing its unfair, unlawful, and/or deceptive practices  
20 and to restore to Plaintiffs and the Class and Subclass members any money Defendant acquired  
21 by unfair competition, including restitution and/or restitutionary disgorgement, as provided in  
22 Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth  
23 below.  
24

25 **COUNT III**  
26 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**  
27 **CALIFORNIA CIVIL CODE § 1750, ET SEQ.**  
**(On Behalf of Plaintiffs and the Class and Subclass)**



1           92. Plaintiffs hereby incorporate all paragraphs of Plaintiffs' Amended Class Action  
2 Complaint against Defendant as if fully set forth herein.

3           93. This cause of action is brought pursuant to Civil Code § 1750, *et seq.*, the  
4 Consumers Legal Remedies Act ("CLRA"), on behalf of a Class and Subclass as defined herein.

5           94. Defendant is a "person" within the meaning of Cal. Civ. Code sections 1761(c)  
6 and 1770.

7           95. Plaintiffs and members of the proposed Subclass are "consumers" within the  
8 meaning of Cal Civ. Code §§ 1761(d) and 1770.

9           96. Defendant's USB Flash Drive products are "goods" or "services" as defined by  
10 Cal. Civ. Code § 1761(a).

11           97. As described above, Defendant violated the CLRA in at least the following  
12 respects:

13           (a) in violation of § 1770(a)(5), by representing that its "goods or services have  
14 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not  
15 have";  
16

17           (b) in violation of § 1770(a)(6), by representing that Defendant's "goods or services are  
18 of a particular standard, quality, or grade, or that goods are of a particular style or model, if they  
19 are of another";  
20

21           (c) in violation of § 1770(a)(9), by "advertising goods or services with intent not to sell  
22 them as advertised";  
23

24           (d) in violation of § 1770(a)(14), by "representing that a transaction confers or involves  
25 rights, remedies, or obligations that it does not have or involve";

26           (e) in violation of § 1770(a)(16), by "representing that the subject of a transaction has been  
27 supplied in accordance with a previous representation when it has not";  
28

1 (f) in violation of § 1770(a)(19), “by inserting an unconscionable provision in the  
2 contract”; and

3 (g) for other such violations of the CLRA that discovery will uncover.

4 98. Defendant’s actions as described herein were done with conscious disregard of  
5 Plaintiffs’ rights and Defendant was wanton and malicious in Defendant’s concealment of the  
6 same.

7 99. Plaintiffs and the Subclass have suffered injury in fact and have lost money as a  
8 result of Defendant’s false representations and material omissions in the marketing and  
9 advertisement of the USB Flash Drives.  
10

11 100. Defendant’s unfair or unlawful acts, practices, representations, omissions, and/or  
12 courses of conduct, as described herein, were undertaken by Defendant in a transaction intended  
13 to result in, and which did result in, the sale or lease of goods or services to consumers.

14 101. As a direct and proximate result of Defendant’s violations of law, Plaintiffs has  
15 been injured.  
16

17 102. On September 4, 2018, Plaintiff Dinan sent Defendant a CLRA notification and  
18 demand letter via certified mail, return receipt requested. See Exhibit A, Proof of Mailing CLRA  
19 Letter by way of certified mail, return receipt requested.

20 103. The notice letter sets forth the relevant facts, notifies each Defendant of its CLRA  
21 violations, and requests that Defendant promptly remedy those violations.  
22

23 104. Under the CLRA, a plaintiff may without prior notification file a complaint  
24 alleging violations of the CLRA that seeks injunctive relief only. Then, if the Defendant does not  
25 remedy the CLRA violations within 30 days of notification, the plaintiff may amend her or his  
26 CLRA causes of action without leave of court to add claims for damages.

27 105. Plaintiff, individually and on behalf of the class, hereby amends this complaint to  
28

1 add damages claims because Defendant has not remedied its violations as to Plaintiff and the  
2 Class Members within the statutory period.

3 106. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff, on behalf of Plaintiff's self and  
4 the Class, demand judgment against Defendant under the CLRA for damages, as well as,  
5 injunctive and equitable relief to enjoin the practices described herein.

6 107. Plaintiffs, individually and as a member of the Class, has no adequate remedy at  
7 law for the future unlawful acts, methods, or practices as set forth above.

8 108. Pursuant to § 1780(d) of the CLRA, attached hereto as Exhibit B is the affidavit  
9 showing that this action has been commenced in the proper forum.

10 109. In bringing this action, Plaintiff has engaged the services of attorneys and has  
11 incurred reasonable legal fees and expenses in an amount to be proved at trial.

12 110. Plaintiffs are also entitled to recover Plaintiff's attorneys' fees, costs, and  
13 expenses.

14 111. Plaintiffs seek damages and an order from this Court enjoining the conduct alleged  
15 herein.

16 112. Defendant's practices, acts and courses of conduct in connection with the sale of  
17 its USB Flash Drive products, as described above, are likely to mislead a reasonable consumer  
18 acting reasonably under the circumstances to his or her detriment. As a result of Defendant's acts  
19 and practices as alleged in this Complaint, Plaintiffs and the Subclass are entitled to injunctive  
20 relief prohibiting Defendant from continuing in the future the unlawful, unfair, or fraudulent  
21 practice as described herein.

22 113. Plaintiffs and the Subclass reasonably believed and/or depended on the material  
23 false and/or misleading information provided by, or omitted by, Defendant with respect to  
24 Defendant's unfair acts and deceptive practices

1 114. By reason of the foregoing, Defendant’s unlawful methods, acts, or practices as  
2 described herein have caused damage to Plaintiffs and the Subclass Members, entitling them to  
3 injunctive relief.

4 **COUNT IV**  
5 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
6 **(California Business & Professions Code §§ 17500, et seq.)**  
7 **(On Behalf of Plaintiffs and the Subclass)**

8 115. Plaintiffs reallege and incorporate by reference all preceding allegations as though  
9 fully set forth herein.

10 116. Cal. Bus. & Prof. Code § 17500 provides:

11 It is unlawful for any . . . corporation . . . with intent directly or  
12 indirectly to dispose of real or personal property or to perform  
13 services, professional or otherwise,. . . to induce the public to enter  
14 into any obligation relating thereto, to make or disseminate or cause  
15 to be made or disseminated . . . from this state before the public in  
16 any state, in any newspaper or other publication, or any advertising  
device, . . . or in any other manner or means whatever, including  
over the Internet, any statement . . . which is untrue or misleading,  
and which is known, or which by the exercise of reasonable care  
should be known, to be untrue or misleading.

17 117. Defendant caused to be made or disseminated throughout the United States,  
18 through advertising, marketing and other publications, statements, including statements included  
19 in its general advertising and on its website that omitted material information from consumers  
20 and members of the Subclass.

21 118. Defendant knew or should have known through the exercise of reasonable care  
22 that the omitted information was material to consumers, including Plaintiffs and the other  
23 Subclass members.

24 119. Defendant has violated Cal. Bus. & Prof. Code § 17500 because their  
25 misrepresentations and omissions regarding the USB Flash Drives gigabyte storage capacity as  
26 described herein were material and likely to deceive a reasonable consumer.  
27

1           120. Plaintiffs and the other Subclass members have suffered an injury in fact, including  
2 the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive  
3 practices. By purchasing the USB Flash Drives, Plaintiffs and the other Subclass members relied  
4 on the representations by Defendant from which Defendant omitted material information. Had  
5 Plaintiffs and the other Subclass members been aware of the omitted information, they would not  
6 have purchased the USB Flash Drives or would have only paid less for it. Plaintiffs and other  
7 Subclass members bestowed a benefit upon Defendant but did not receive the benefit of their  
8 bargain.  
9

10           121. All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
11 conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized  
12 course of conduct that is still perpetuated and repeated, in the state of California and elsewhere.

13           122. Plaintiffs, individually and on behalf of the other Subclass members, request that  
14 this Court enter such orders or judgments as may be necessary to enjoin Defendant from  
15 continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the  
16 other Subclass members any money Defendant acquired by unfair competition, including  
17 restitution and/or restitutionary disgorgement, and for such other relief set forth below.  
18

19 **VIII. PRAYER FOR RELIEF**

20           WHEREFORE, Plaintiffs and the Class and Subclass pray for judgment as follow:

21           A. For an order certifying the proposed class, appointing Plaintiffs and Plaintiffs'  
22 counsel to represent the proposed class, appointing counsel for Plaintiffs as lead counsel for the  
23 respective class;  
24

25           B. An order awarding declaratory relief and temporarily and permanently enjoining  
26 Defendant from continuing the unlawful, deceptive, fraudulent, and/or unfair business practices  
27 alleged in this Complaint;  
28

- 1 C. Appropriate injunctive relief;
- 2 D. For an order awarding restitution, disgorgement, actual damages, statutory  
3 damages, exemplary damages, treble damages, and punitive damages under applicable law, and  
4 compensatory damages for economic loss, diminished value, and out-of-pocket costs in an  
5 amount to be determined at trial;
- 6 E. A declaration that Defendant is financially responsible for all Class and Subclass  
7 notice and the administration of Class and Subclass relief;
- 8 F. An order awarding any applicable statutory and civil penalties;
- 9 G. An order requiring Defendant to pay both pre- and post-judgment interest on any  
10 amounts awarded;
- 11 H. An award of costs, expenses, and attorneys' fees as permitted by law; and
- 12 I. Such other or further relief as the Court may deem appropriate, just, and proper  
13 under the circumstances.  
14

15 **IX. DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby demand a jury trial for all claims so triable.

17 DATED: June 21, 2019 LAW OFFICE OF FRANCIS J. FLYNN, JR.

18  
19 /s/ Francis J. Flynn, Jr.  
Francis J. Flynn, Jr.  
422 South Curson Avenue  
20 Los Angeles, California 90036-3169  
21 T: 314-662-2836  
22 F: 1-855-710-7706  
E: casey@lawofficeflynn.com

23 James Rosemergy (to seek admission pro hac vice)  
24 Paul Maddock (to seek admission pro hac vice)  
CAREY, DANIS & LOWE  
25 8235 Forsyth Boulevard  
Saint Louis, Missouri 63105-1643  
26 Tele: 314-725-7700  
Email: jrosemergy@careydanis.com  
27 Email: pmaddock@careydanis.com

28 **ATTORNEYS FOR PLAINTIFFS AND THE**

