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11 UNITED STATES DISTRICT COURT

12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 NATHAN JACKSON, on behalf of himself  
14 and all others similarly situated,

15 Plaintiff,

16 v.

17 WESTERN DIGITAL CORPORATION;  
18 WESTERN DIGITAL TECHNOLOGIES,  
19 INC.; and SANDISK, LLC,  
20 Defendants

**Case No.**

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

21 Plaintiff Nathan Jackson (“Jackson” or “Plaintiff”), on behalf of himself and all others  
22 similarly situated, hereby files this class action complaint against defendants Western Digital  
23 Corporation (“Western Digital”); Western Digital Technologies, Inc.; and SanDisk, LLC  
24 (“SanDisk”) (collectively “Defendants”). Plaintiff alleges as follows on information and belief,  
25 except for allegations specific to Plaintiff, which are alleged based on personal knowledge.

## SUMMARY OF THE ACTION

1  
2 1. Western Digital Corporation, incorporated in California and headquartered in San  
3 Jose, California, designs, manufactures, markets, and sells a variety of computer storage devices,  
4 including solid state hard drives. In 2016, Western Digital acquired SanDisk Corporation, which  
5 then manufactured, marketed and sold various flash memory and solid state storage devices  
6 (“SSDs”). Western Digital continues to design, manufacture, market, and sell a variety of storage  
7 devices through the SanDisk, LLC subsidiary as well as its Western Digital, Inc., subsidiary.  
8 Included among Western Digital’s products are a series of storage devices based on solid state  
9 drives. This action is brought on behalf of purchasers of certain SSDs, including 500 gigabyte, 1  
10 terabyte, 2 terabyte, and 4 terabyte versions of the SanDisk Extreme Pro, Extreme Portable,  
11 Extreme Pro Portable, and Western Digital MyPassport SSD (collectively the “Defective Drives”).  
12 SSDs are generally known to be more reliable, more durable, and faster than traditional hard disks.  
13 Indeed, Defendant specifically market’s the Defective Drives as such, claiming, *inter alia*, that  
14 they are “Fast and Dependable,” “reliable enough to take on any adventure,” “Tough Enough to  
15 Take With You,” “TAKING DURABILITY TO GREATER HEIGHTS,” allowing users to  
16 “[c]arry your data with confidence.”<sup>1,2</sup>

17 2. In truth, the Defective Drives are plagued with a defect that causes them to  
18 disconnect from their host computer without warning or otherwise become unreadable (the  
19 “Defect”). The Defect can result in, *inter alia*, data loss, inaccessible drives, and computer crashes.  
20 Consumers who paid for fast reliable storage are instead left with unstable, untrustworthy storage  
21 that is not useable for the purpose for which it was marketed to consumers and class members.

22 3. Despite knowing of the Defect, Defendant continues to market the Defective Drives  
23 widely, selling them on websites such as Amazon.com and through brick and mortar retailers such  
24 as Best Buy.

25 <sup>1</sup> <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd#SDSSDE81-1T00-G25>, last visited on September 8, 2023.

26 <sup>2</sup> <https://www.westerndigital.com/products/portable-drives/wd-my-passport-usb-3-2-ssd#WDBAGF5000ABL-WESN>, last visited on September 8, 2023.

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**JURISDICTION AND VENUE**

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

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

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do substantial business in this District, a substantial part of the events giving rise to Plaintiff’s claims took place within this District (e.g., the design, marketing, and research regarding the Defective Drives), and Defendants’ principal places of business are in this District.

**PARTIES**

7. Plaintiff Nathan Jackson is, and at all times relevant was, a citizen of the state of Texas, residing in McLennan County. Plaintiff Jackson purchased a SanDisk Extreme for \$199.99 on or about August 2, 2022, from Amazon.com. Within a month of Plaintiff Jackson’s purchase, the SanDisk Extreme lost functionality and Plaintiff Jackson was unable to access photos, videos, and other documents that he had stored on the drive. Plaintiff Jackson’s drive is now useless as Plaintiff Jackson cannot access data stored on it, nor can he use it as intended. In deciding to purchase the drive, Plaintiff Jackson relied on the reputation of SanDisk as well as the reputation of SSDs as being capable of safely and reliably storing data.

8. Defendant Western Digital Corporation maintains its headquarters at 5601 Great Oaks Parkway, San Jose, California, and is incorporated under the laws of the state of Delaware. Western Digital Corporation is the parent company of Western Digital Technologies, Inc. and

1 SanDisk, LLC. Western Digital Corporation markets the Defective Disks directly through its  
2 website, www.westerndigital.com.

3 9. Defendant SanDisk LLC is a business incorporated under the laws of the state of  
4 Delaware with its principal place of business at 951 SanDisk Drive, Milpitas, CA. SanDisk  
5 markets, manufactures, and sells digital storage technology, including SSDs.

6 10. Defendant Western Digital Technologies, Inc. is a business incorporated under the  
7 laws of the state of Delaware with its principal place of business at 5601 Great Oaks Parkway, San  
8 Jose, CA. Western Digital Technologies, Inc. is the seller of record and licensee in the Americas  
9 of SanDisk products.

10  
11 **FACTUAL ALLEGATIONS**

12 **The Defect**

13 11. Defendants design, manufacture, market and sell a variety of digital storage  
14 devices, including SSDs.

15 12. SSDs are increasingly the computer storage medium of choice for consumers. SSDs  
16 function by storing data in semiconductor cells. Traditional magnetic hard disk drives rely on  
17 magnetic disks that spin at a high rate of speed and are subject to damage from shocks or falls. In  
18 comparison to hard disk drives SSDs are typically more resistant to physical shock, run silently,  
19 and operate at higher speed. As a result, SSDs are generally known to be more reliable, more  
20 durable, and faster than traditional hard disks. Indeed, Defendant specifically market's the  
21 Defective Drives as such, claiming, *inter alia*, that they are "Fast and Dependable," "reliable  
22 enough to take on any adventure," "Tough Enough to Take With You," "TAKING DURABILITY  
23 TO GREATER HEIGHTS," allowing users to "[c]arry your data with confidence." <sup>3,4</sup>

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25 <sup>3</sup> <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd#SDSSDE81-1T00-G25>, last visited on September 12, 2023.

26 <sup>4</sup> <https://www.westerndigital.com/products/portable-drives/wd-my-passport-usb-3-2-ssd#WDBAGF5000ABL-WESN>, last visited on September 12, 2023.  
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1 I chose the SanDisk Extreme Pro V2 drive based no [sic] the company  
 2 reputation but I should have heavily weighted the negative reviews on  
 3 reliability issues as part of my decision. The first drive became unreadable  
 4 after about 3 days. The drive was reformatted and back to use but failed  
 5 again after a day. The defective drive was exchanged for a new drive. The  
 6 new initially seemed to be working better because it worked for 5 days  
 before becoming unreadable. The 2nd drive was reformatted and worked  
 for 3 days. I wish I could return the 2nd drive for a refund because there has  
 been too much time wasted trying to make the drives work successfully and  
 reliably.

7 *Id.*

8  
 9 19. A review posted in or about February 2023 on the website for retailer Best Buy  
 10 described the SanDisk Extreme Portable 4TB SSD as “the worst ssd I’ve ever had to deal with. If  
 11 you are a Mac user, don’t purchase this trash ssd. It’s not compatible. Randomly deletes data and  
 12 unmounts itself. You can’t re mount it no matter what without reformatting and losing all your  
 13 data. I thought I had a defect but the second replacement has the same issues.”<sup>6</sup> Similarly, a review  
 14 posted in or about March 2023 stated that the consumer “[b]ought this item 36 days ago... item has  
 15 failed and I lost about 3T worth of work. Best Buy doesn't take returns after 15 days and Western  
 16 Digital (who own SanDisk) only warranties their product for 30 days. Now I see why. \$330 down  
 the drain!! DON'T BUY!!” *Id.*

17  
 18 20. Similarly, in a February 3, 2023 post on Reddit.com, titled “A Warning About  
 19 SanDisk Extreme Pro SSDs,” a Reddit Contributor warned fellow users of SanDisk Extreme Pro  
 SSDs that:<sup>7</sup>

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 21 Multiple DITs/Loaders/ACs on both coasts have experienced the exact  
 22 same failure with these drives over the last month. The symptom seems to  
 23 be that after a sustained write they will completely lose their filesystem and  
 it's a total crap shoot wether [sic] you can recover it or not. The primary  
 way you will see this is that the drive will unmount and you will not be able

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 25 <sup>6</sup> <https://www.bestbuy.com/site/reviews/sandisk-extreme-portable-4tb-external-usb-c-nvme-ssd-black/6472036?variant=A&skuId=6472036&rating=1&sort=OLDEST>, last visited on September  
 26 12, 2023.

27 <sup>7</sup> [https://www.reddit.com/r/editors/comments/10syawa/a\\_warning\\_about\\_sandisk\\_extreme\\_pro\\_sds/](https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_sds/) (last visited on September 12, 2023).

1 to get it to mount again, despite showing up in Disk Utility. You can  
2 sometimes recover it using DiskDrill's filesystem rebuild, but occasionally  
3 that does nothing. It persists with any filesystem type.

4 21. The author of the Reddit post noted Defendants' knowledge of the issue, stating  
5 that "[a] few of us are working with a colleague at SanDisk to try and get this addressed . . . ." *Id.*  
6 However, it appears there was resistance from Defendants as the author further stated that "we're  
7 collecting data to prove to SanDisk that it actually is more than a fluke." *Id.* That post garnered  
8 more than 280 comments, with many users noting similar problems. Indeed, the first Reddit user  
9 to respond to the post stated that "[t]his happened to me earlier this week. I posted a story about  
10 it on instagram and 9 different people responded experiencing the same issue within the last  
11 month." *Id.*

12 22. By May 2023, occurrence of the Defect had become so widespread that it was  
13 reported in an article in the online technology journal Ars Technica. The article, titled "SanDisk  
14 Extreme SSDs keep abruptly failing—firmware fix for only some promised," stated that  
15 "[c]omplaints go back at least four months, and SanDisk told Ars today that a firmware fix is  
16 coming "soon." However, SanDisk only confirmed a firmware update for the 4TB models, despite  
17 an Ars staffer and online users reporting issues with 2TB drives."

18 23. Notably, Ars Technica asserted that the Defect was more widespread than  
19 Defendants were willing to admit to, stating that "Ars saw two 2TB units become unreadable, but  
20 SanDisk only confirms 4TB troubles."<sup>8</sup> Ars Technica noted "online discussions filled with  
21 panicked and disappointed users detailing experiences with recently purchased Extreme V2 and  
22 Extreme Pro V2 portable SSDs." *Id.*

23 24. Ars Technica further noted Defendants' failure to Defendants' failure to adequately  
24 respond to complaints regarding the Defect, noting "little public response from SanDisk, which  
25 has mostly referred online users to open a support ticket with SanDisk's technical support team.  
26 Questions about refunds have been left unanswered. *Id.* The article further stated that:

27 <sup>8</sup> [https://arstechnica.com/gadgets/2023/05/sandisk-extreme-ssds-keep-abruptly-failing-firmware-  
28 fix-for-only-some-promised/](https://arstechnica.com/gadgets/2023/05/sandisk-extreme-ssds-keep-abruptly-failing-firmware-fix-for-only-some-promised/) (last visited on September 11, 2023).

1 SanDisk's minimal response thus far is especially disappointing considering  
2 the popularity of SanDisk's Extreme portable SSDs. Many tech publications  
3 (including Ars in 2020) have recommended the drive. Its rugged build  
4 particularly appeals to users who don't want physical issues resulting in data  
5 loss. Turns out, it wasn't just drops and splashes of water they had to worry  
6 about.

7 *Id.* Despite these complaints, Defendants continued to market and sell the Defective Drives.

### 8 **Defendants' Firmware Fix Fails to Fix The Problem**

9 25. Responding to numerous complaints regarding the Defective Drives, in late May  
10 2023, Defendants issued a firmware update (the "Firmware Update") that provided, at best, a  
11 limited response to the Defect. Defendants specified the limited scope of the Firmware Update,  
12 noting that it was for the SanDisk Extreme Portable 4TB (SDSSDE61-4T00), the SanDisk Extreme  
13 Pro Portable 4TB (SDSSDE81-4T00), the SanDisk Extreme Pro 2TB (SDSSDE81-2T00); the  
14 SanDisk Extreme Pro 1TB (SDSSDE81-1T00); and the WD My Passport 4TB  
15 (WDBAGF0040BGY). In announcing the Firmware Update, Defendants acknowledged that "[w]e  
16 have identified a firmware issue that can cause SanDisk Extreme Portable SSD V2, SanDisk  
17 Extreme Pro Portable SSD V2, and WD My Passport SSD products to unexpectedly disconnect  
18 from a computer."<sup>9</sup>

19 26. In addition to the fact that the Firmware Update was not designed to address the  
20 Defect in all of the SSDs manifesting the Defect, the Firmware Update does not appear to have  
21 effectively fixed the Defect in even the intended drives. An August 7, 2023, article published on  
22 TheVerge.com details the failure of a "*supposedly safe replacement* that Western Digital recently  
23 sent after his original *wiped his data all by itself* supposedly safe replacement" (emphasis in  
24 original).<sup>10</sup> The article published on The Verge also noted that a "Reddit search suggests we may  
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26 <sup>9</sup> <https://support-en.wd.com/app/firmwareupdate>, last visited on September 12, 2023.

27 <sup>10</sup> <https://www.theverge.com/22291828/sandisk-extreme-pro-portable-my-passport-failure-continued>, last visited on September 12, 2023.

1 not be the only ones who've already lost data again.” *Id.* The article highlighted Defendants’ failure  
 2 to adequately address the Defect, first noting that while “[l]ost’ is not always ‘gone’ when it comes  
 3 to data. But data recovery services can be expensive, and Western Digital never offered [the  
 4 purchaser of the Defective Drive] any the first time it left him out to dry.” *Id.* The article further  
 5 stated that:

6 . . . it feels like WD has been trying to sweep this under the rug while it tries  
 7 to offload its remaining inventory at a deep discount — they’re still 66  
 8 percent off at Amazon, for example. As far as I’m aware, WD has yet to  
 even acknowledge the possibility of massive data loss. Here, it merely says  
 that the drives have a “firmware issue” where they might “unexpectedly  
 disconnect from a computer.” Doesn’t sound all that urgent?

9 *Id.* Defendants’ publicizing of the Firmware Update, while failing to disclose that the Defect has  
 10 not been adequately addressed, furthers the harm suffered by Class Members and increases the  
 11 ill-gotten gains Defendants are making from the sale of Defective Drives.

### 12 13 CLASS ACTION ALLEGATIONS

14 27. Pursuant to Fed. R. Civ. P. 23(b)(1), (b)(2), (b)(3), and (c)(4), Plaintiff asserts  
 15 common law claims, as more fully alleged hereinafter, on behalf of the following Nationwide  
 16 Class. In addition, Plaintiff Jackson asserts claims on behalf of a Nationwide Class, defined as  
 17 follows and, in the alternative, on behalf of a class of Texas consumers, defined as follow:  
 18

19 **Nationwide Class:** All residents of the United States who purchased one or more of the  
 20 Defective Drives.

21 **Texas Class:** All residents of the state of Texas who purchased one or more of the  
 22 Defective Drives.

23 Members of the Nationwide Class and the Texas Class are referred to herein collectively as “Class  
 24 Members” or “Class.”

25 28. Excluded from the Class are Defendants, any entity in which Defendants have a  
 26 controlling interest, and Defendants’ officers, directors, legal representatives, successors,  
 27

1 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer  
2 presiding over this matter and the members of their immediate families and judicial staff.

3 29. The proposed Class meets the requirements of Fed. R. Civ. P. 23(a), (b)(1), (b)(2),  
4 (b)(3), and (c)(4).

5 30. **Numerosity:** The exact number of members of the Class is unknown to Plaintiff at  
6 this time but the Defective Drives are very popular and collectively, Defendants are among the  
7 world's largest sellers of data storage products such as SSDs. Ultimately, members of the Class  
8 will be readily identified through Defendant's records.

9 31. **Commonality and Predominance:** There are many questions of law and fact  
10 common to the claims of Plaintiff and the other members of the Class, and those questions  
11 predominate over any questions that may affect individual members of the Class. Common  
12 questions for the Class include:

- 13 a) Whether Defendants knew of the defect at the time they manufactured,  
14 marketed, and sold the Defective Drives;
- 15 b) Whether Defendants failed to take adequate steps to prevent the Defect;
- 16 c) Whether Defendants failed to timely notify Class Members of the Defect;
- 17 d) Whether Defendants engaged in unfair, unlawful, or deceptive practices by  
18 manufacturing, marketing, and selling the Defective Drives;
- 19 e) Whether Defendants violated the consumer protection statutes applicable to  
20 Plaintiff and Class Members;
- 21 f) Whether Defendants' conduct described herein breached applicable  
22 warranties;
- 23 g) Whether Defendants should retain the money paid by Plaintiff and each of  
24 the Class Members for the Defective Drives;
- 25 h) Whether Plaintiff and the Class Members are entitled to damages as a result  
26 of Defendants' wrongful conduct;
- 27 i) Whether Plaintiff and the Class Members are entitled to restitution as a  
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1 result of Defendants' wrongful conduct;

2 j) What equitable relief is appropriate to redress Defendants' wrongful  
3 conduct; and

4 k) What injunctive relief is appropriate to redress the imminent and currently  
5 ongoing harm faced by Class Members.

6 32. **Typicality:** Plaintiff's claims are typical of the claims of each of the Class  
7 Members. Plaintiff and the Class Members sustained damages as a result of Defendants' uniform  
8 wrongful conduct during transactions with them.

9 33. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of  
10 the Class and has retained counsel competent and experienced in complex litigation and class  
11 actions. Plaintiff has no interests antagonistic to those of the Class, and there are no defenses  
12 unique to Plaintiff. Plaintiff and his counsel are committed to prosecuting this action vigorously  
13 on behalf of the members of the proposed Class and have the financial resources to do so. Neither  
14 Plaintiff nor his counsel have any interest adverse to those of the other members of the Class.

15 34. **Separateness:** This case is appropriate for certification because prosecution of  
16 separate actions would risk either inconsistent adjudications which would establish incompatible  
17 standards of conduct for the Defendant or would be dispositive of the interests of members of the  
18 proposed Class.

19 35. **Class-wide Applicability:** This case is appropriate for certification because  
20 Defendants have acted or refused to act on grounds generally applicable to the Plaintiff and  
21 proposed Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure  
22 compatible standards of conduct towards members of the Class and making final injunctive relief  
23 appropriate with respect to the proposed Class as a whole. Defendants' practices challenged herein  
24 apply to and affect the members of the Class uniformly, and Plaintiff's challenge to those practices  
25 hinges on Defendants' conduct with respect to the proposed Class as a whole, not on individual  
26 facts or law applicable only to Plaintiff.



1 42. The implied warranty of merchantability included with each sale of a Defective  
2 Drive means that Defendants warranted that each item (a) would pass without objection in trade  
3 under the contract description; (b) was fit for the ordinary purposes for which the Defective Drives  
4 would be used; and (c) conformed to Defendants' promises or affirmations of fact.

5 43. This implied warranty included, *inter alia*, a warranty that the Defective Drives  
6 manufactured, supplied, distributed, and/or sold by Defendants were safe and reliable; and a  
7 warranty that the Defective Drives would be fit for their intended use.

8 44. Contrary to the applicable implied warranties, the Defective Drives were, at the  
9 time of sale and thereafter, defective and not fit for their ordinary and intended purpose in that  
10 they posed a significant risk of catastrophic failure and data loss.

11 45. The Defect at the point of sale or lease exists without warning to Plaintiff and the  
12 Class.

13 46. Plaintiffs and Class were intended third-party beneficiaries of the contracts for sale  
14 of the Defective Drives from Defendants to their agents (*e.g.*, retail sellers) who ultimately sold  
15 the Defective Drives to Plaintiff and Class Members. Defendants, which manufacture and market  
16 the Defective Drives, knew that Plaintiffs and the Class Members were end-users of the Defective  
17 Drives, and brought itself into privity with Plaintiffs and the Class who relied upon representations  
18 made by Defendants as alleged herein.

19 47. Defendants' actions have deprived Plaintiff and the Class of the benefit of their  
20 bargain and have caused the Defective Drives to be worth less than what Plaintiffs and the Class  
21 paid for them.

22 48. Any attempt by Defendants limit or disclaim the implied warranties in a manner  
23 that would exclude coverage of the Defect is unenforceable and void pursuant to California Civil  
24 Code §§ 1790.1, 1792.3, and 1793.

25 **COUNT III**  
26 **Breach of Express Warranties Under the Song-Beverly Consumer Warranty Act**

1 49. Plaintiff Jackson realleges and incorporates by reference the allegations contained  
2 in all preceding paragraph as though fully set forth at length herein.

3 50. Plaintiff brings this claim on behalf of himself and the Class.

4 51. The Defective Drives are “consumer goods” under California Civil Code §  
5 1791(a).

6 52. Defendants are and were at all relevant times each a “manufacturer” of the  
7 Defective Drives California Civil Code § 1791(j).

8 53. Plaintiff and the Class bought the Defective Drives designed, manufactured,  
9 warranted, marketed to them, and intended to be purchased or leased by consumers such as them,  
10 by Defendants.

11 54. Defendants expressly warranted the Defective Drives against defects within the  
12 meaning of California Civil Code §§ 1791.2 and 1793.2.

13 55. As described above, the Defective Drives are defective. The Defect impairs the use  
14 and value of the Defective Drives to reasonable consumers, Plaintiff and the Class.

15 56. Defendants knew of the Defect when they expressly warranted the Defective  
16 Drives, wrongfully and fraudulently concealed material facts regarding the Defect, failed to  
17 inform Plaintiff and Class that the Systems were defective, and induced Plaintiff and the Class to  
18 purchase the Defective Drives under false and/or fraudulent pretenses.

19 57. Defendants are obligated, under the terms of the express warranties accompanying  
20 the Defective Drives and pursuant to California Civil Code §§ 1793.2 and 1795.4 to repair and/or  
21 replace the Defective Drives at no cost to Plaintiff and the Class.

22 58. Defendants breached their express warranties by supplying the Defective Drives  
23 to Plaintiff and the Class.

24 59. As detailed above, Defendants have been on notice of the Defect and of their  
25 breach of their express written warranties from various sources, including Plaintiff.

26 60. Any express warranties promising to repair and/or correct any defects fail in their  
27 essential purpose because the contractual remedy is insufficient to make Plaintiff and the Class

1 whole and because Defendants have failed and/or have refused to adequately provide the promised  
2 remedies within a reasonable time.

3 61. Accordingly, recovery by Plaintiff and the Class is not restricted to any written  
4 warranties promising to repair and/or correct defects, and they seek all remedies as allowed by  
5 law.

6 62. Any attempt by Defendants to limit or disclaim the express warranties in a manner  
7 that would exclude coverage of the Defect is unenforceable and void pursuant to California Civil  
8 Code § 1790.1.

9 63. As a direct and proximate result of Defendants' breach of their express warranties,  
10 Plaintiff and the Class received goods that have substantially impaired value and have suffered  
11 damages in an amount to be determined at trial.

12 64. Pursuant to California Civil Code §§ 1794 and 1795.4, Plaintiff and the Class are  
13 entitled to incidental, consequential, and other damages and other legal and equitable relief, as  
14 well as costs and attorneys' fees.

15 **COUNT III**  
16 **Unjust Enrichment**

17 65. Plaintiff Jackson realleges and incorporates by reference the allegations contained  
18 in all preceding paragraph as though fully set forth at length herein.

19 66. Plaintiff brings this claim individually and on behalf of the Class against  
20 Defendants.

21 67. By obtaining and retaining revenue derived from the sale of Defective Drives to  
22 Plaintiff and the Class, Defendants have been unjustly enriched. Retention of those monies under  
23 these circumstances is unjust and inequitable because Defendants failed to disclose that the  
24 Defective Drives are defective and pose a significant risk of catastrophic failure and/or data loss,  
25 rendering the Defective Drives unfit for their intended use and thus unfit for sale. Defendants'  
26 misrepresentations and/or material omissions caused injuries to Plaintiff and the Class Members  
27 because they would not have purchased the Defective Drives if the true facts were known.

1 68. Because Defendants’ retention of the non-gratuitous benefits conferred on them by  
2 Plaintiff and the Class is unjust and inequitable, Defendants must pay restitution to Plaintiff and  
3 the Class for its unjust enrichment, as ordered by the Court.

4 **COUNT IV**  
5 **Unlawful, Unfair and Fraudulent Business Practices,**  
6 **California Business and Professions Code § 17200, *et seq.***

7 69. Plaintiff Jackson realleges and incorporates by reference the allegations contained  
8 in all preceding paragraph as though fully set forth at length herein.

9 70. Plaintiff brings this claim on behalf of himself and the Class.

10 71. Defendants’ practices as alleged in this complaint constitute unlawful, unfair, and  
11 fraudulent business practices under California’s Unfair Competition Law, Bus. & Prof. Code §§  
12 17200, *et seq.* (“UCL”).

13 72. Defendant committed unlawful, fraudulent and/or unfair business practices in  
14 violation of the UCL because it, among other things: (a) knew or should have known that its  
15 Defective Drives contained a defect; (b) knew or should have known Plaintiff Class Members  
16 could not learn or discover the Defect; (c) failed to disclose the Defect; and (d) engaged and  
17 continues to engage in conduct that is immoral, unethical, oppressive, unscrupulous, or  
18 substantially injurious to Plaintiffs and the Class.

19 73. Among other things, Defendants: (a) failed to disclose and/or concealed from  
20 Plaintiff and Class Members at the time of sale that the Defective Drives contained a significant  
21 Defect as detailed herein; and (b) failed to repair, replace, or recall the Defective Drives. Because  
22 the Defect is not observable, reasonable Plaintiff and Class Members were deceived into  
23 purchasing Defective Drives.

24 74. Plaintiff and Class Members have suffered injury in fact as a result of Defendants’  
25 unlawful, unfair, or fraudulent practices, in that, among other things: (a) they would not have  
26 purchased the Defective Drives; (b) they have been deprived of making an informed decision about  
27

1 the Defective Drives they purchased; and (c) they would not have entrusted their data to the  
2 Defective Drives.

3 75. Having exclusive knowledge regarding the Defect, Defendants had a duty to  
4 disclose the Defect, particularly in light of the fact that the Defect poses risks of economic losses  
5 to Plaintiff and the Class Members.

6 76. Plaintiff and the Class Members reasonably expected that Defendants would  
7 disclose the existence of the Defect to consumers and the public, and reasonably expected that  
8 Defendants would not sell a product that was defective and/or that failed to provide consistent,  
9 reliable, and dependable storage. This information is and was material to Plaintiff and Class  
10 Members.

11 77. Defendants, at all times relevant, knew or should have known that Plaintiff and  
12 Class Members did not know of, or could not have reasonably discovered, the risks related to the  
13 Defect.

14 78. By concealing the existence of the Defect, Defendants engaged in actionable,  
15 fraudulent conduct within the meaning of the UCL.

16 79. Had Plaintiff and the Class Members known that the Defective Drives were  
17 defective, they would not have purchased them. In addition, Plaintiff and the Class Members have  
18 lost the benefit of their bargain as the Defective Drives they paid for are not worth the price paid  
19 due to their defective condition.

20 80. Defendants' business acts and practices alleged herein are unfair within the  
21 meaning of the UCL. Specifically, by failing to disclose and actively concealing the existence of  
22 the Defect in the Defective Drives, Defendants have engaged in unfair conduct within the meaning  
23 of the UCL.

24 81. Defendants' misconduct is unfair within the meaning of the UCL: it offends  
25 established policy and/or is immoral, unethical, unscrupulous, and substantially injurious to  
26 consumers; its utility, if any, is outweighed by the gravity of the consequences to Plaintiff and the  
27 Class; and it undermines or violates the stated policies underlying the California Consumers Legal  
28

1 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”), which seeks to protect consumers  
2 against unfair and sharp business practices and promote a basic level of honesty and reliability in  
3 the marketplace, and thus provides a sufficient predicate for Plaintiffs' aforesaid claims for unfair  
4 business practices.

5 82. Defendants committed unlawful acts and practices by, among other things,  
6 engaging in conduct, as alleged herein, that violates the CLRA and the FAL.

7 83. Plaintiffs and the Class have suffered damages as a result of Defendants'  
8 misconduct. Defendants' unlawful, unfair, and fraudulent business acts and practices continue  
9 through the date of this filing.

10 84. The above-described unfair, unlawful, and fraudulent business practices conducted  
11 by Defendants present a threat and likelihood of harm and deception to members of the Class and  
12 the public in that Defendant has systematically perpetrated and continues to perpetrate the unfair,  
13 unlawful, and fraudulent conduct upon members of the public by engaging in the conduct  
14 described herein.

15 85. Under the UCL, Plaintiff and Class request that Defendants be enjoined from  
16 engaging in business practices that constitute a violation of the UCL and other acts prohibited by  
17 law. Plaintiffs and Class Members further request that this Court enter such orders or judgments  
18 as may be necessary to restore to any person in interest any money which may have been acquired  
19 by means of such unfair practices, as provided for in California Business and Professions Code §  
20 17203 and for such other relief as set forth herein.

21 **COUNT V**  
22 **Violation of California's Consumers Legal Remedies Act (“CLRA”),**  
23 **Cal. Civ. Code §§ 1750, *et seq.***  
24 **(Injunctive Relief Only)**

25 86. Plaintiff Jackson realleges and incorporates by reference the allegations contained  
26 in all preceding paragraph as though fully set forth at length herein.  
27

1 87. Plaintiff brings this claim individually and on behalf of the Class against  
2 Defendants.

3 88. Plaintiff and the Class are consumers within the meaning of Cal. Civ. Code §  
4 1761(d).

5 89. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have .  
6 . . characteristics, ingredients, uses, benefits, or quantities which they do not have . . . .”

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

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

12 92. Defendants violated Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9) by  
13 intentionally and misleadingly representing that the Defective Drives are dependable and  
14 functional, a fact that was material to Plaintiff and reasonable consumers.

15 93. Defendants’ misrepresentations and omissions deceived, and have a tendency and  
16 ability to deceive, reasonable consumers and the general public.

17 94. Defendants have exclusive or superior knowledge of the cause of the Defect and its  
18 presence on the Defective Drives, which was not known to Plaintiff or the Class.

19 95. Plaintiff and the Class have suffered harm as a result of these violations of the  
20 CLRA because they have paid monies for Defective Drives that they otherwise would not have  
21 incurred or paid. Had Plaintiff and the Class known that the Drives were fatally defective and had  
22 a significant risk of catastrophic failure and/or data loss, they would not have purchased the  
23 Defective Drives.

24 96. Plaintiff, on behalf of himself and all other members the Class, seeks an injunction  
25 prohibiting Defendants from continuing their unlawful practices in violation of the CLRA.

26 97. On September 13, 2023, Plaintiff sent notice of the Defect to Defendants, informing  
27 Defendants of his intention to seek damages under California Civil Code § 1750 in the absence of  
28

1 full restitution. The letter was sent via certified mail, return receipt requested, advising Defendants  
2 that they were in violation of the CLRA and demanding that they cease and desist from such  
3 violations and make full restitution by refunding the monies received therefrom. The letter  
4 expressly stated that it was sent on behalf of Plaintiff and “all other persons similarly situated.”  
5 Accordingly, if Defendants fail to take corrective action within 30 days of receipt of the demand  
6 letter, Plaintiff will amend his complaint to include a request for damages as permitted by Civil  
7 Code § 1782(d) for Defendants’ violations of the CLRA.

8  
9 **COUNT VI**  
10 **Violation of California’s False Advertising Law (“FAL”),**  
11 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

12 98. Plaintiff Jackson realleges and incorporates by reference the allegations contained  
13 in all preceding paragraph as though fully set forth at length herein.

14 99. Plaintiff brings this claim individually and on behalf of the Class against  
15 Defendants.

16 100. Defendants’ acts and practices, as described herein, have deceived and/or are likely  
17 to continue to deceive the Class and the public. As described above, and throughout this Complaint,  
18 Defendants misrepresented that their Drives were dependable and functional SSDs. Such  
19 representations are not true because the Drives have an outsized risk of catastrophic failure and/or  
20 data loss.

21 101. Defendants disseminated uniform advertising regarding the Defective Drives. The  
22 advertising was, by its very nature, unfair, deceptive, untrue, and misleading within the meaning  
23 of California’s False Advertising Law, Cal. Bus. & Prof. Code §§17500, *et seq.* (the “FAL”). Such  
24 advertisements were intended to, and likely did, deceive the consumers and the public for the  
25 reasons detailed herein.

26 102. The false, misleading, and deceptive advertising disseminated by Defendants  
27 continues to have a likelihood to deceive in that Defendants continue to misrepresent, without  
28

1 qualification, that the Defective Drives are dependable, functional, and fit for their ordinary  
2 purpose, as data storage devices.

3 103. In making and disseminating these statements, Defendants knew, or should have  
4 known, their advertisements were untrue and misleading and thus in violation of California law.  
5 Defendants know that the Defective Drives are defective, yet failed, and continue to fail, to disclose  
6 this fact to consumers.

7 104. Plaintiff and the Class purchased the Defective Drives based on Defendants'  
8 misrepresentations and omissions.

9 105. Defendants' misrepresentations and non-disclosures of the material facts described  
10 and detailed herein constitute false and misleading advertising and, therefore, constitute a violation  
11 of the FAL.

12 106. As a result of Defendants' wrongful conduct, Plaintiff and the Class lost money in  
13 an amount to be proven at trial. Plaintiff and the Class are therefore entitled to restitution as  
14 appropriate for this cause of action.

15 107. Plaintiff and the Class seek all monetary and non-monetary relief allowed by law,  
16 including restitution of all profits stemming from Defendants' unfair, unlawful, and fraudulent  
17 business practices; declaratory relief; reasonable attorneys' fees and costs under Cal. Code Civ.  
18 Proc. § 1021.5; and other appropriate equitable relief.

19  
20 **COUNT VII**

21 **Violations of the Deceptive Trade Practices Act – Consumer Protection Act**  
22 **(Tex. Bus. & Com. Code §§ 17.41, *et seq.*)**  
23 **(On behalf of Plaintiff Jackson and the Texas Subclass)**

24 108. Plaintiff Jackson realleges and incorporates by reference the allegations contained  
25 in all preceding paragraph as though fully set forth at length herein.

26 103. Plaintiff Jackson brings this claim on behalf of himself and the Texas Subclass.

27 104. Plaintiff and the Texas Subclass are individuals, partnerships, or corporations with  
28 assets of less than \$25 million (or are controlled by corporations or entities with less than \$25

1 million in assets), see Tex. Bus. & Com. Code § 17.41, and are therefore “consumers,” pursuant  
2 to Texas Business and Commercial Code § 17.45(4). Defendants are each a “person” within the  
3 meaning of Texas Business and Commercial Code § 17.45(3).

4 105. Defendants are each engaged in “trade” or “commerce” or “consumer transactions”  
5 within the meaning of Texas Business and Commercial Code § 17.46(a).

6 106. The Texas Deceptive Trade Practices – Consumer Protection Act (“Texas DTPA”)  
7 prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or  
8 commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of  
9 action,” which means an act or practice which, to a consumers detriment, takes advantage of the  
10 lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.”  
11 Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3).

12 107. In the course of their business, Defendants knew that the Defective Drives were  
13 defectively designed or manufactured, were subject to catastrophic failure, and/or data loss, and  
14 were not suitable for their intended use. Yet, Defendants concealed and suppressed material facts  
15 – the Defect – concerning the Defective Drives and its related risks.

16 108. Defendants thus violated the Texas DTPA by, at minimum, representing that the  
17 Defective Drives have characteristics, uses, benefits, and qualities which they do not have;  
18 representing that the Defective are of a particular standard and quality when they are not;  
19 advertising the Defective Drives with the intent not to sell them as advertised; and omitting  
20 material facts in describing the Defective Drives concealing their Defect.

21 109. Defendants engaged in misleading, false, unfair, and deceptive acts or practices that  
22 violated the Texas DTPA by failing to disclose and actively concealing the Defect.

23 110. Defendants owed Plaintiff and the Texas Subclass Members a duty to disclose the  
24 existence of the Defect because:

25 a) Defendants were in a superior position to know the true state of facts  
about the Defect;

26 b) Plaintiff and the Texas Subclass Members could not reasonably have been  
27 expected to learn or discover that the Defective Drives were defective until

1 manifestation of the Defect;

2 c) Defendants knew that Plaintiff and the Texas Subclass Members could not  
reasonably have been expected to learn about or discover the Defect; and

3 d) Defendants actively concealed the Defect, its causes, and resulting effects,  
4 from Plaintiff and Texas Subclass Members by asserting that, *inter alia*, the  
Firmware Update would address and remedy the Defect.

5 111. Whether or not the Defective Drives work properly is a fact a reasonable consumer  
6 would consider important in deciding to purchase or lease them. When Plaintiff and the Texas  
7 Subclass Members bought or leased the Defective Drives for personal, family, or household  
8 purposes, they reasonably expected they would not be defective.

9 112. Defendants' unfair or deceptive acts or practices were likely to and did in fact  
10 deceive reasonable consumers, including Plaintiff, about the safety and reliability of the Defective  
11 Drives.

12 113. Plaintiff and the Texas Subclass suffered ascertainable loss and actual damages as  
13 a direct and proximate result of Defendants' misrepresentations and concealment of, and failure to  
14 disclose, material information – the Defect. Plaintiff and the Texas Subclass Members who  
15 purchased the Defective Drives would not have purchased them at all if the Defect had been  
16 disclosed or would have paid significantly less for them. Plaintiff and the Texas Subclass Members  
17 also suffered diminished value, as well as lost or diminished use, of their Defective Drives.

18 114. The omissions and acts of concealment by Defendants pertained to information that  
19 was material to Plaintiff and the Texas Subclass Members, as it would have been to all reasonable  
20 consumers.

21 115. Defendant had an ongoing duty to all its customers to refrain from unfair and  
22 deceptive practices under the Texas DTPA in the course of its business.

23 116. Defendants' violations present a continuing risk to Plaintiff as well as to the general  
24 public. Defendants' unlawful acts and practices complained of herein affect the public interest.

25 117. Pursuant to Texas Business and Commercial Code § 17.50, Plaintiff and the Texas  
26 Subclass seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages,  
27 multiple damages for knowing and intentional violations, pursuant to § 17.50(b)(1), punitive  
28

1 damages, and attorneys' fees, costs, and any other just and proper relief available under the Texas  
2 DTPA.

3 118. On September 13, 2023, Plaintiff Jackson sent a letter to Defendants complying  
4 with Texas Business and Commercial Code § 17.505(a).

5  
6 **PRAYER FOR RELIEF**

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

- 9 a) For an order: certifying the nationwide Class and the Class under Rule 23 of the  
10 Federal Rules of Civil Procedure; naming Plaintiff as representative of the  
11 Nationwide Class and Texas Subclass; and appointing Plaintiff's attorneys as Class  
12 Counsel to represent the Nationwide Class and Texas Subclass;
- 13 b) For an order declaring the Defendants' conduct violates the statutes referenced  
14 herein;
- 15 c) For an order finding in favor of Plaintiff, the Nationwide Class, and the Texas  
16 Subclass on all counts asserted herein;
- 17 d) For compensatory, statutory, and punitive damages in amounts to be determined by  
18 the Court and/or jury;
- 19 e) For prejudgment interest on all amounts awarded;
- 20 f) For an order of restitution and all other forms of equitable monetary relief;
- 21 g) For injunctive relief as pleaded or as the Court may deem proper; and
- 22 h) For an order awarding reasonable attorneys' fees and expenses and costs of suit to  
23 Plaintiff, and the Nationwide Class, and the Texas Subclass.

24 **DEMAND FOR JURY TRIAL**

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

26  
27 Dated: September 12, 2023

Respectfully submitted,

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By: /s/ STEPHEN R. BASSER  

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STEPHEN R. BASSER

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\* Application for admission *pro hac vice* to  
be filed

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

Nathan Jackson v. Western Digital Corporation, et al.

**CIVIL COVER SHEET**

**ATTACHMENT A**

<b>Date Filed</b>	<b>Case No.</b>	<b>Case Name</b>	<b>Judge</b>
8/15/2023	3:23-cv-04152	Krum Et Al. v. Western Digital Technologies, Inc.	Vince Chhabria
8/17/2023	3:23-cv-04201	Perrin Et Al. v. Western Digital Technologies, Inc.	Vince Chhabria
8/17/2023	3:23-cv-04206	Jafri Et Al. v. Western Digital Technologies, Inc.	Vince Chhabria
8/22/2023	3:23-cv-04281	Pousa Et Al. v. Western Digital Technologies, Inc.	Vince Chhabria
9/5/2023	5:23-cv-04543	Bax Et Al. v. Western Digital Technologies, Inc.	Susan van Keulen