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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW PERRIN and BRIAN BAYERL, individually and on behalf of all others similarly situated,)	No.
)	CLASS ACTION COMPLAINT
<i>Plaintiffs,</i>)	<u>CLASS ACTION</u>
v.)	<u>JURY TRIAL DEMANDED</u>
SANDISK LLC; WESTERN DIGITAL CORPORATION; WESTERN DIGITAL TECHNOLOGIES, INC.,)	
)	
<i>Defendants.</i>)	

Plaintiffs Matthew Perrin (“Plaintiff Perrin”) and Brian Bayerl (“Plaintiff Bayerl”) (collectively “Plaintiffs”), hereby allege the following against SanDisk LLC (“SanDisk”), Western Digital Corporation (“WD Corp” or “Western Digital Corp”), Western Digital Technologies, Inc. (“WD Tech” or “Western Digital Tech” and collectively with “WD Corp”, “Western Digital” or “Defendants”) on behalf of themselves and all others similarly situated. Plaintiffs’ complaint is based on personal knowledge, information and belief, the investigation of counsel, and public sources.

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NATURE OF ACTION

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2 1. Plaintiffs bring this action against Defendants on behalf of a class of persons
3 (defined below) who purchased SanDisk Extreme Solid-State Drives, SanDisk Extreme PRO
4 Solid-State Drives, and WD My Passport Solid-State Drives (the “SanDisk SSDs”).

5 2. The SanDisk SSDs are manufactured and sold to offer high-speed data transfer
6 and storage. Storage capacity, speed, and durability are major selling points for the SanDisk
7 SSDs as they are designed for, among others, photographers, videographers, and other creative
8 professionals who work with large files, need to access them quickly, and work outside an office
9 environment.

10 3. Beginning in early 2023 users of the SanDisk SSDs began complaining in online
11 forums—including forums on SanDisk’s own website¹—that the SanDisk SSDs are suddenly,
12 and without warning, wiping data and, in some cases, becoming unreadable. In other words, the
13 SSDs suddenly become worthless.

14 4. After months of inaction, Defendant Western Digital finally admitted in May of
15 2023 that the SanDisk SSDs had a firmware problem and released a firmware update that
16 purported to resolve issues on *some* of the SanDisk SSDs that are regularly failing customers. At
17 the time, Western Digital announced that they “addressed this firmware issue in the
18 manufacturing process, and we can confirm that the issue is not impacting currently shipping
19 products.”

20 5. However, Western Digital’s purported fix has not resolved anything and
21 consumers continue to have their products fail, causing them to lose the valuable data they stored
22 on the SanDisk SSDs, and defeating the purpose of owning a SanDisk SSD in the first place.

23 6. These issues have had a material impact on the value of the SanDisk SSDs that
24 Plaintiffs purchased. Given the unreliability, Plaintiffs and class members can no longer
25 realistically use the SanDisk SSDs for fear of losing all of their data.
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28 ¹ SanDisk Forums, *Extreme Portable SSD*, <https://forums.sandisk.com/c/portable-ssd/extreme-portable-ssd/235> (last visited Aug. 16. 2023).

1 28 U.S.C. §1391(b) because a substantial portion of the conduct described in this Complaint was
2 carried out in this District. Furthermore, each Defendant maintains its principal place of business
3 in this District.

4 **INTRADISTRICT ASSIGNMENT**

5 13. Pursuant to Northern District of California Civil Local Rules 3-2(c) and 3-5(b),
6 assignment to the San Jose Division of this district is proper because a substantial part of the
7 events or omissions giving rise to the claims asserted herein occurred in Santa Clara County,
8 California, and Defendants' principal place of business is located in Santa Clara County,
9 California.

10 **PARTIES**

11 14. Plaintiff Matthew Perrin is a natural person domiciled in the State of Florida.
12 Between 2022 and 2023, Plaintiff Perrin purchased at least eight SanDisk Extreme SSDs from
13 Amazon.com, including Extreme 2TB, Extreme 4TB, and Extreme PRO 4TB. Despite being
14 touted as fast, rugged and dependable, Plaintiff Perrin has experienced these drives arbitrarily
15 ejecting themselves, not being seen as a valid hard drive when plugged back into a computer, and
16 would often display a message that "this drive is not readable." As a result of the defects present
17 in the SanDisk SSDs, Plaintiff Perrin lost all data stored on several SanDisk SSDs.

18 15. Plaintiff Brian Bayerl is a natural person domiciled in the State of Florida. In
19 2023, Plaintiff Baryl purchased at least two SanDisk Extreme SSDs from Amazon.com,
20 including SanDisk Extreme 4TB. Despite being touted as fast, rugged and dependable, Plaintiff
21 Bayerl has experienced the failure of two drives within minutes of each other and is now
22 reluctant to use SanDisk Extreme products. Due to the nature of his work and the data on the
23 devices, Plaintiff Bayerl spent nearly \$8,000 on only partially successful efforts to retrieve the
24 data from the failed drives through various data recovery third parties. These efforts also
25 determined that the issue was caused by faulty internal firmware on the drives.

26 16. Defendant SanDisk LLC is a business incorporated under the laws of the state of
27 Delaware with its principal place of business at 951 SanDisk Drive, Milpitas, CA.

1 17. Defendant Western Digital Corporation is a business incorporated under the laws
2 of the state of Delaware with its principal place of business at 5601 Great Oaks Parkway, San
3 Jose, CA. Western Digital Corporation is the parent company of a conglomerate of corporate
4 entities, including Defendants SanDisk LLC and Western Digital Technologies, Inc.

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

9 **I. THE SANDISK EXTREME AND EXTREME PRO SSDs**

10 19. Defendants Western Digital Corp, Western Digital Tech, and SanDisk launched
11 the SanDisk Extreme and Extreme PRO SSDs in 2018 at the Consumer Electronics Show (CES)
12 in Las Vegas, Nevada. From the start, Defendants made clear that the SanDisk Extreme SSDs
13 were developed for, among others, photographers and videographers who “require durable and
14 high-performance media capture solutions,” and described the “the new, superfast SanDisk
15 Extreme® Portable SSD” as “perfect for saving and editing hi-res photos and videos on-the-go.”

16 20. Defendants also advertised the reliability and durability of the Extreme and
17 Extreme PRO SSDs, pointing out that the drives had an IP55 rating (meaning it could withstand
18 water and dust), and releasing videos showing photographers out in the wilderness using the
19 Extreme and/or Extreme PRO SSDs,² among other things.

20 21. The SanDisk Extreme and Extreme PRO SSDs represented a significant
21 technological shift over the traditional digital data storage options of Hard Disk Drives (HDDs),
22 thumb drives, and memory cards. For example, HDDs have always been plagued by reliability
23 problems due to their mechanical nature and vulnerability to physical shocks in environments
24 that required mobility. In contrast, the Extreme and Extreme PRO SSDs, leveraging flash storage
25 technology, eliminated moving parts entirely. This not only enhanced durability but also enabled
26 faster data access and writing speeds, far outpacing HDDs.

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28 ² SanDisk, *SanDisk Extreme Portable SSD | Official Product Overview*, Youtube,
<https://www.youtube.com/watch?v=on0B70waoM8> (accessed Aug. 11, 2023).

1 22. Compared to thumb drives and memory cards, which also use flash storage, the
 2 Extreme and Extreme PRO SSDs offer a more robust storage solution in terms of capacity.
 3 While thumb drives and memory cards are designed for portability and might suffice for casual
 4 storage needs, they often fall short when it comes to storing larger files or managing high-quality
 5 content demands, such as those of professional photographers and videographers. The SanDisk
 6 SSDs not only provided substantially greater storage capacity but were also purpose-built to
 7 handle the rigors of professional content creation.

8 23. In 2020, Defendants unveiled an “enhanced” line of Extreme and Extreme Pro
 9 SSDs dubbed version 2, offering “nearly 2x the speed over previous generations.”³ In its official
 10 press release, Defendants noted that the SanDisk Extreme and SanDisk Extreme PRO portable
 11 SSDs “are purpose-built to keep up with today’s high-quality content demands. Professional
 12 photographers, videographers and enthusiasts capture and keep life’s best moments every day
 13 *and they need reliable solutions that perform on the move at astonishing speeds*” (emphasis
 14 added).

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 16 **II. THE SANDISK EXTREME AND EXTREME PRO SSD’S SOLD BY**
DEFENDANTS ARE DEFECTIVE

17 24. In early 2023, SanDisk SSD purchasers began reporting abrupt SanDisk SSD
 18 failures resulting in the permanent loss of their data.

19 25. For example, a video production professional posted the following description of
 20 SanDisk SSD failures on Reddit:

21 Multiple DITs/Loaders/ACs on both coast have [sic] experienced the exact same
 22 failure with these drives over the last month. The symptom seems to be that after
 23 a sustained write they will completely lose their filesystem and it’s a total crap
 24 shoot wether [sic] you can recover it or not. The primary way you will see this is
 25 that the drive will unmount and you will not be able to get it to mount again,
 despite showing up in Disk Utility. You can sometimes recover it using
 DiskDrill’s filesystem rebuild, but occasionally that does nothing. It persists with
 any filesystem type.

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 27 ³ Press Release, *Western Digital, Western Digital Unveils Unmatched Combination of Speed and*
Portability With Its Enhanced Line of SanDisk Extreme Portable SSDs (Sept. 30, 2020)
 28 [https://www.westerndigital.com/company/newsroom/press-releases/2020/2020-09-30-western-](https://www.westerndigital.com/company/newsroom/press-releases/2020/2020-09-30-western-digital-unveils-enhanced-line-of-sandisk-extreme-portable-ssds)
[digital-unveils-enhanced-line-of-sandisk-extreme-portable-ssds](https://www.westerndigital.com/company/newsroom/press-releases/2020/2020-09-30-western-digital-unveils-enhanced-line-of-sandisk-extreme-portable-ssds) (accessed Aug. 15, 2023).

1 *A few of us are working with a colleague at SanDisk to try and get this*
2 *addressed*, but in the meantime we're collecting data to prove to SanDisk that it
3 actually is more than a fluke . . . If you've experienced this, we would really
4 appreciate it if you would log it at this form with as much of the information that
5 you have. We promise we aren't selling your info, only sending the failures direct
6 to SanDisk so they can hopefully track down the root of the issue.
7 <https://notionforms.io/forms/drivetracker/>⁴ (emphasis added)

8 26. Similarly, another SanDisk SSD purchasers reported the following:

9 I bought [a SanDisk Extreme Pro External 4TB SSD] on Thursday from B&H.
10 Arrived Friday and I formatted it to I believe macos extended journaled, then
11 loaded it up with a bunch of essentially irreplaceable photos without much
12 thought. This morning I uploaded a bunch of them to my Cryptomater iCloud
13 vault to show a friend. I come back a few hours later and I can't view the files on
14 this drive and I eject it, plug it back in and it won't mount, but I can see it in disk
15 utility and it knows it's 4TB.⁵

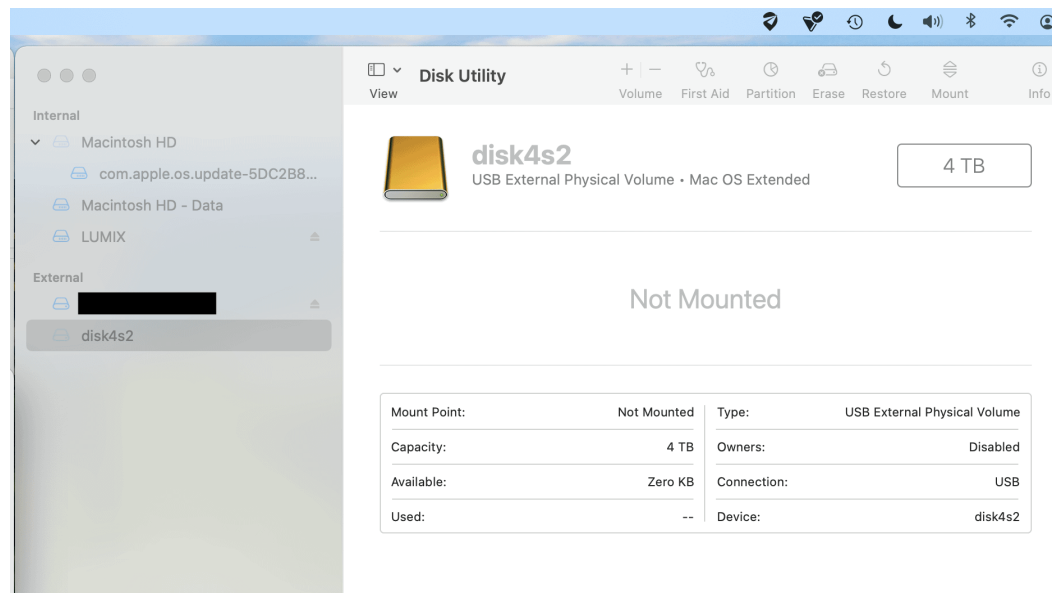
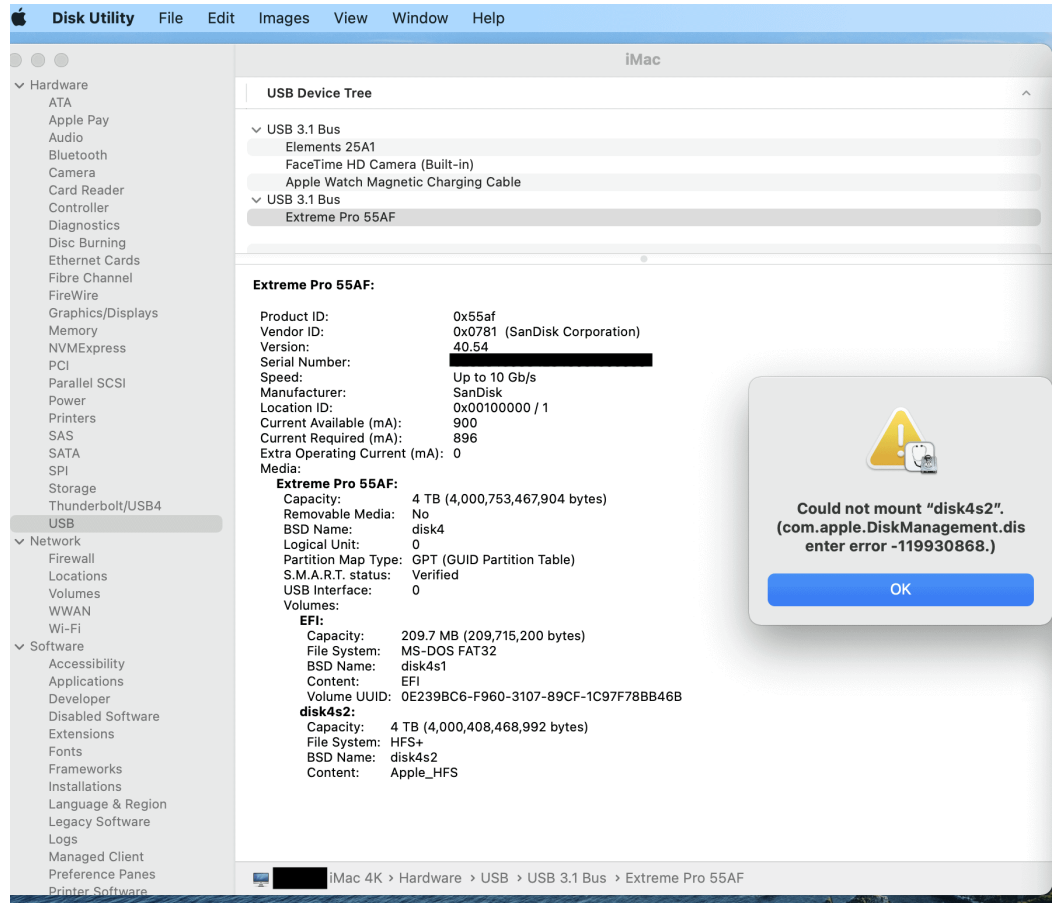
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19 ⁴ Ian ___, *Western Digital Unveils Unmatched Combination of Speed and Portability With Its*
20 *Enhanced Line of SanDisk Extreme Portable SSDs*,
21 https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_ssds/ (last visited
22 Aug. 16, 2023).

23 _____
24 ⁵ Outlookable, *Sandisk Extreme Pro External 4TB SSD failing to mount to MacOS*,
25 https://www.reddit.com/r/datarecovery/comments/106s7n3/sandisk_extreme_pro_external_4tb_ssd_failing_to/ (last
26 visited Aug. 16, 2023).

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27. And another user claiming to be a videography professional reported the following experience:

1 Take my advice and stay away. Yesterday was the second time my 4TB Extreme
 2 Portable SSD v2 crapped out on me -- greyed out in Disk Utility and
 3 unmountable. I tried different USB-C cables, switched out the directions,
 4 rebooted my computer (MBP'21 M1max), everything I could. Sandisk customer
 5 support is a joke.

6 And this was also the **second time** this drive corrupted. Formatting it fixed it the
 7 first time but that's not an option anymore because how am I supposed to rely on
 8 an SSD for video editing if it corrupts itself randomly? (and yes, I safely ejected it
 9 every time even though you don't technically have to do that if the drive is
 10 plugged in but idle). Thankfully I had my files backed up in 2 other places so my
 11 work isn't lost, but I'm out about \$400 now. Currently trying to return it to B&H.⁶

12 28. Despite the slew of complaints and the apparent willingness of some victims to
 13 try and work with SanDisk to resolve the issue, Defendants refused to acknowledge the
 14 widespread issue for months and mostly referred purchasers of SanDisk SSDs who experienced
 15 drive failures to open a support ticket with SanDisk's technical support team.

16 29. This only changed in May 2023, when multiple media outlets picked up the story
 17 and contacted Defendants for comment in advance of publication.

18 30. The stories from media outlets like *The Verge* and *ARS Technica* covering the
 19 SanDisk SSD issues noted the commonality of complaints and even featured personal
 20 experiences of the media outlets' own employees or their friends. For example, *The Verge* author
 21 Sean Hollister noted that "Over two months ago, my friend and Verge supervising producer
 22 Vjieran Pavic told me he'd lost an entire 4TB SanDisk Extreme Pro worth of video clips.
 23 Completely gone with no trace"⁷ and the *Ars Technica* story included the following experience
 24 of an *Ars Technica* employee:

25 Ars Technica's Lee Hutchinson confirmed suffering not one, but two 2TB
 26 Extreme Pros dying. After filling about halfway, each drive met a slew of read
 27 and write errors. When he disconnected and reconnected the SSD, it showed it
 28 was unformatted with the drive completely wiped, including its file system.
 Wiping and reformatting didn't help, and this happened with two different units.

Lee's story is echoed by many people, including those on SanDisk's forums, who
 bought one of the external SSDs within the past few months. The problem seems

⁶ steed_jacob, (Rant) Sandisk Extreme Portable SSDs are HORRIBLE,
https://www.reddit.com/r/videography/comments/1191jw0/rant_sandisk_extreme_portable_ssds_are_horrible/ (last
 visited Aug. 16, 2023).

⁷ Sean Hollister, *Buyer beware: some SanDisk Extreme SSDs are wiping people's data*, *The Verge*, (May 22, 2023), <https://www.theverge.com/2023/5/22/23733267/sandisk-extreme-pro-failure-ssd-firmware>.

1 to only affect a recent batch of drives, with one user claiming they were told via a
2 Japanese distributor that “this problem is causing a fuss and is only for those
3 manufactured after November 2022” (Ars couldn’t confirm this). The Reddit user
4 ian__, who claimed to be collecting error reports to share with SanDisk, agreed
5 that the issue only affects recent batches. And some users said they used several
6 Extreme and Extreme Pros over the years but only saw ones purchased recently
7 fail.⁸

8 31. Defendants only responded after authors from multiple news outlets contacted
9 them in advance of publishing stories highlighting the issue. At that point, Western Digital gave
10 its first admission that the SanDisk SSDs were defective, but claimed to have developed a fix,
11 telling a reporter:

12 Western Digital is aware of reports indicating some customers have experienced
13 an issue with 4TB SanDisk Extreme and/or Extreme Pro portable SSDs
14 (SDSSDE61-4T00 and SDSSDE81-4T00 respectively). We have resolved the
15 issue and will publish a firmware update to our website soon. Customers with
16 questions or who are experiencing issues should contact our Customer Support
17 team for assistance.

18 **III. DEFENDANTS’ DELAYED RESPONSE AND FIRMWARE UPDATE HAS NOT**
19 **FIXED THE ISSUE.**

20 32. On May 22, 2023, Western Digital admitted that all SanDisk SSDs had a defect
21 that could cause users to unexpectedly and permanently lose their data, stating that Western
22 Digital had “identified a firmware issue that can cause SanDisk Extreme Portable SSD V2,
23 SanDisk Extreme Pro Portable SSD V2, and WD My Passport SSD products to unexpectedly
24 disconnect from a computer” and that Western Digital had “developed a firmware updater tool
25 that allows the needed firmware to be installed, enabling your continued use of the SSD on your
26 Windows and/or macOS device.” Defendants then proceeded to confidently state that they “had
27 addressed this firmware issue in the manufacturing process, and we can confirm that the issue is
28 not impacting currently shipping products.”

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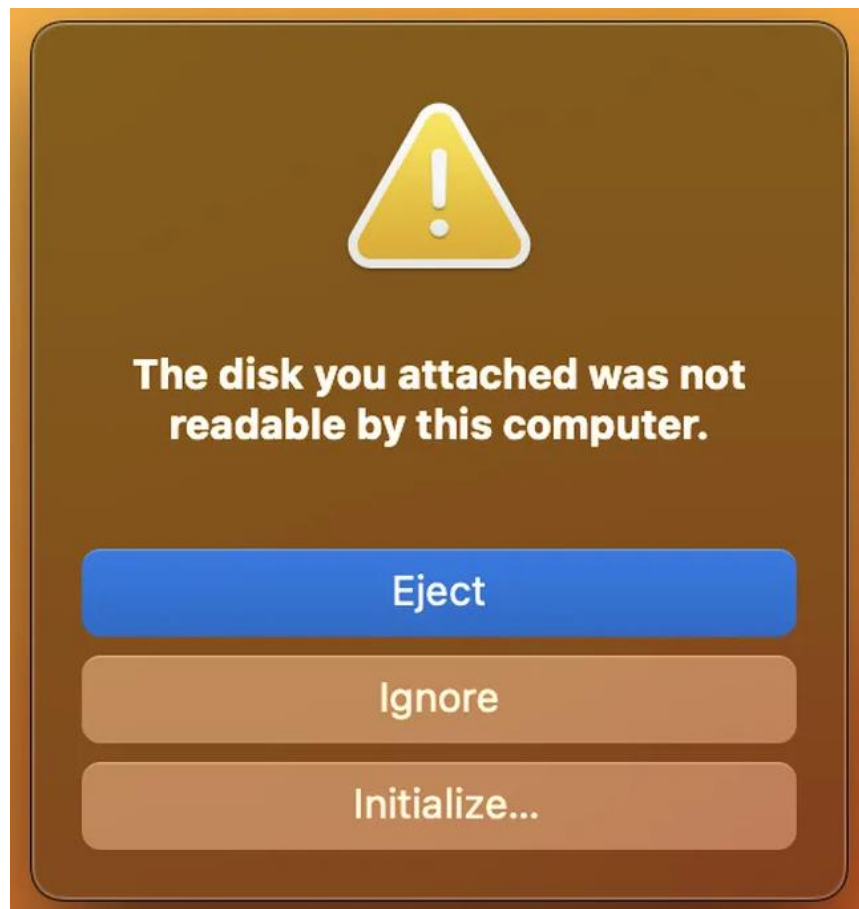
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⁸ Scharon Harding, *SanDisk Extreme SSDs keep abruptly failing—firmware fix for only some promised*, Ars Technica (May 19, 2023), <https://arstechnica.com/gadgets/2023/05/sandisk-extreme-ssds-keep-abruptly-failing-firmware-fix-for-only-some-promised/>.

1 33. But unfortunately for Plaintiffs and Class members, this is untrue. The firmware
2 update has not fixed the defective SanDisk SSDs, and the defective SanDisk SSDs are still
3 failing post-firmware update, resulting in permanent data loss.

4 34. On August 7, 2023, *The Verge* reporter Sean Hollister (author of the original
5 *Verge* article covering the SanDisk SSDs defect), reported that purchasers and users of defective
6 SanDisk SSDs continue to report widespread data loss issues with the SanDisk SSDs even after
7 installing the firmware update, and included an example from his own colleague:

8 My colleague Vjieran just lost 3TB of video we'd shot for *The Verge* because the
9 drive is no longer readable



24 This isn't a drive he purchased many months or years ago—it's the supposedly
25 safe replacement that Western Digital recently sent after his original wiped his
26 data all by itself. SanDisk issued a firmware fix for a variety of drives in late May,
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1 shortly after our story. They sent out Vjeran’s replacement in early June. He’d
just begun to trust it with work files again.⁹

2 35. And *Ars Technica* reported that users have reported similar experiences on
3 Reddit, even after installing the firmware updated. For example, *Ars Technica* published the post
4 of user Natural-Opposite-633 on Reddit posted on July 26 that they updated their 4TB Extreme
5 SSD’s firmware:

6 ... about a week after that, I was transferring some files from my Android device
7 to it, and it did the same thing, unmounted and would no longer mount unless you
8 formatted it. The data could be recovered with Diskdrill, but with generic
9 serialized names. ... I have 4 of these drives in total, one 4TB and one 2TB that
are not flagged as being affected and have been pretty solid. One new 4TB that
was flagged as being affected and [had] data loss twice as described above, and
one new 4TB I got through an Amazon sale that I’m regretting buying.¹⁰

10 36. Thus, despite Defendants’ claims that the firmware update fixed the defective
11 SanDisk SSDs, consumers continue to report drive failures and data loss with the SanDisk
12 Extreme and SanDisk Extreme PRO SSDs.

13 37. This example underscores one of the fundamental problems with SanDisk’s
14 response to its defective products.

15 38. SanDisk’s online store is supposed to support refunds within 30 days. The drives
16 have a five-year limited warranty, which states customers can “return the Product after first
17 obtaining a Return Material Authorization number and following any other guidelines listed. For
18 further information see shop.westerndigital.com/sandisk and select ‘support.’”

19 39. It also says SanDisk can “repair or replace the Product with a new reconditioned
20 or refurbished Product of equal or greater capacity, or another equivalent product” or “refund the
21 current market value” if SanDisk can’t repair or replace it.

22 40. However, a new or repaired drive doesn’t address the loss of data—from a
23 product whose sole purpose was to store data.

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25 ⁹ Sean Hollister, *We just lost 3TB of data on a SanDisk Extreme SSD*, The Verge (Aug. 7, 2023),
26 <https://www.theverge.com/22291828/sandisk-extreme-pro-portable-my-passport-failure-continued>.

27 ¹⁰ Scharon Harding, *SanDisk’s silence deafens as high-profile users say Extreme SSDs still*
28 *broken*, *Ars Technica* (Aug. 10, 2023), <https://arstechnica.com/gadgets/2023/08/sandisk-extreme-ssds-are-still-wiping-data-after-firmware-fix-users-say/>.

1 41. The purpose of the SanDisk SSDs, as advertised and intended by Defendants, was
2 to safely, securely, and reliably store digital data.

3 42. The information described above, including the now-known issues with the
4 defective SanDisk SSDs and significant risk of permanent data loss, has rendered the SanDisk
5 SSDs worthless to individuals seeking reliable data storage.

6 43. As a result of the above, Plaintiffs and the Class have suffered damages in the
7 form of permanent loss of digital data and will have to undertake considerable expense to replace
8 the defective SanDisk SSDs with non-defective SSDs capable of performing the functions
9 Defendants promised the SanDisk SSDs would perform.

10 **IV. DEFENDANTS HAVE CONTINUED SELLING DEFECTIVE SANDISK SSDS**
11 **WHILE DOWNPLAYING THE DEFECT**

12 44. Rather than pull the defective SanDisk SSDs from the shelves via recall,
13 Defendants have instead continued selling the defective SanDisk SSDs.

14 45. When reports of the defect first started surfacing, but before national media
15 coverage, Defendants steeply discounted the defective SanDisk SSDs in what appeared to be an
16 effort offload defective products on a then-uninformed consumer base. For example, the
17 following screenshot from SanDisk’s Amazon store shows that SanDisk was offering a 67%
18 discount on SanDisk SSDs in May 2023:

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MAY 2023

SanDisk 4TB Extreme PRO Portable SSD - Up to 2000MB/s - USB-C, USB 3.2 Gen 2x2 - External Solid State Drive - SDSSDE81-4T00-G25



Roll over image to zoom in



Visit the SanDisk Store
4.5 ★★★★★ 8,332 ratings
| 276 answered questions

-67% \$299⁹⁹

List Price: \$899.99

FREE Returns

Pay \$25.00/month for 12 months, interest-free upon approval for Amazon Visa

Available at a lower price from other sellers that may not offer free Prime shipping.

Extra Savings 90 days FR...
1 Applicable Promotion

Pattern:
SSD

46. And today, despite the information and events described above, Defendants are still selling defective SanDisk SSDs at significant discounts:

AUGUST 15, 2023



Roll over image to zoom in



SanDisk 2TB Extreme PRO Portable SSD - Up to 2000MB/s - USB-C, USB 3.2 Gen 2x2 - External Solid State Drive - SDSSDE81-2T00-G25

Visit the SanDisk Store
4.3 ★★★★★ 9,173 ratings
| 300 answered questions

Amazon's Choice for "sandisk ssd"

-20% \$174⁹⁹

List Price: \$219.99

FREE Returns

Get \$50 off instantly: Pay \$124.99 upon approval for Amazon Visa.

Available at a lower price from other sellers that may not offer free Prime shipping.

Capacity: **2TB**

1TB	2TB	4TB
\$119.99	\$174.99	\$297.00

Pattern: **SSD**

Digital Storage Capacity

Hard Disk Interface

Connectivity Technology

47. Defendants are thus flooding the market with defective devices while simultaneously failing to fix the defective devices already in customers' hands. These actions are exacerbating the harm to the general public as they are causing additional consumers to purchase virtually worthless devices which are incapable of performing their core intended function.

1 **CLASS ACTION ALLEGATIONS**

2 48. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
3 Procedure on behalf of themselves and as representatives of the following Class:

4 All persons in the United States who purchased SanDisk SSDs since 2020¹¹ (“the
5 Class”).

6 49. Plaintiffs reserve the right to modify, expand or amend the above Class definition
7 or to seek certification of a class or classes defined differently than above before any court
8 determines whether certification is appropriate following discovery.

9 **FLORIDA SUBCLASS**

10 50. Plaintiffs bring this action individually and on behalf of the following Florida
11 Subclass pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and (3), and 23(c)(4) on
12 behalf of the following Florida Subclass:

13 All persons residing in the State of Florida who purchased SanDisk SSDs since
14 2020 (the “Florida Subclass”).

15 51. Plaintiffs reserve the right to modify, expand, or amend the above Florida
16 Subclass definition or to seek certification of a class or classes defined differently than above
17 before any court determines whether certification is appropriate following discovery.

18 52. **Ascertainability.** The proposed Class and Subclass are readily ascertainable
19 because they are defined using objective criteria so as to allow class members to determine if
20 they are part of a Class or Subclass. Further, the Class and Subclass can be readily identified
21 through records maintained by Defendants.

22 53. **Numerosity (Rule 23(a)(1)).** The Class and Subclass are so numerous that
23 joinder of individual members herein is impracticable. The exact number of Class or Subclass
24 members, as herein identified and described, is not known, but Defendants have sold at least
25 thousands of defective SanDisk SSDs.

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27 ¹¹ Plaintiffs have defined the Class and Subclass based on currently available information and
28 hereby reserve the right to amend the definition of the Class and/or Subclass, including, without
limitation, membership criteria and the Class Period.

1 54. **Commonality (Rule 23(a)(2)).** Common questions of fact and law exist for each
2 cause of action and predominate over questions affecting only individual Class and Subclass
3 members, including the following:

- 4 a. whether the SanDisk SSDs had a material defect;
- 5 b. whether Defendants knew, or should have known, that the SanDisk SSDs had a
6 defect;
- 7 c. whether Defendants had a duty to disclose, and wrongfully failed to disclose, that
8 the SanDisk SSDs had a defect;
- 9 d. whether Defendants misrepresented material facts and/or failed to disclose
10 materials facts in connection with the manufacturing, packaging, labeling,
11 marketing, distribution, and sale of the SanDisk SSDs;
- 12 e. whether Defendants' representations and omissions on the labeling of the SanDisk
13 SSDs are likely to mislead, deceive, confuse or confound consumers acting
14 reasonably;
- 15 f. whether Defendants represents to consumers that the SanDisk SSDs have
16 characteristics, benefits, or qualities that they do not have;
- 17 g. whether Defendants had knowledge that its representations and/or omissions were
18 false, deceptive, and/or misleading;
- 19 h. whether Defendants continues to make representations and/or omissions despite
20 knowledge that the representations and/or omissions are false, deceptive, and/or
21 misleading;
- 22 i. whether Defendants breached its express warranties;
- 23 j. whether Defendants breached its implied warranties;
- 24 k. whether Defendants engaged in fraudulent, deceptive, misleading, unlawful,
25 and/or unfair trade practices;
- 26 l. whether Defendants engaged in false advertising;
- 27 m. whether Defendants made negligent and/or fraudulent misrepresentations and/or
28 omissions;

- 1 n. whether Plaintiffs and the members of the Class and Subclass are entitled to
- 2 actual, statutory, and punitive damages;
- 3 o. whether Defendants unjustly retained a benefit such that restitution is appropriate;
- 4 and
- 5 p. whether Plaintiffs and members of the Class and Subclass are entitled to
- 6 declaratory and injunctive relief.

7 55. **Typicality (Rule 23(a)(3)).** Plaintiffs' claims are typical of the claims of the
8 proposed Class and Subclass. Plaintiffs and the Class and Subclass (as applicable) suffered
9 injuries because of Defendants' wrongful conduct that is uniform across the Class and Subclass.

10 56. **Adequacy (Rule 23(a)(4)).** Plaintiffs have and will continue to represent and
11 protect the interests of the Class and Subclass fairly and adequately. Plaintiffs have retained
12 counsel competent and experienced in complex litigation and class actions. Plaintiffs have no
13 interest that is antagonistic to those of the Class and Subclass, and Defendants have no defenses
14 unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this
15 action on behalf of the members of the Class and Subclass, and they have the resources to do so.
16 Neither Plaintiffs nor Plaintiffs' counsel have any interest adverse to those of the other members
17 of the Class and Subclass.

18 57. **Substantial Benefits.** This class action is appropriate for certification because
19 class proceedings are superior to other available methods for the fair and efficient adjudication of
20 this controversy and joinder of all members of the Class and Subclass is impracticable. The
21 prosecution of separate actions by individual members of the Class and Subclass would impose
22 heavy burdens upon the courts and Defendants, would create a risk of inconsistent or varying
23 adjudications of the questions of law and fact common to members of the Class and Subclass,
24 and would be dispositive of the interests of the other members not parties to the individual
25 adjudications or would substantially impair or impede their ability to protect their interests. This
26 proposed class action presents fewer management difficulties than individual litigation, and
27 provides the benefits of single adjudication, economies of scale, and comprehensive supervision
28

1 by a single court. Class treatment will create economies of time, effort, and expense and promote
2 uniform decision-making.

3 58. Class certification, therefore, is appropriate under Fed. R. Civ. P. 23(b)(3)
4 because the above common questions of law or fact predominate over any questions affecting
5 individual members of the Class and Subclass, and a class action is superior to other available
6 methods for the fair and efficient adjudication of this controversy.

7 59. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) because
8 Defendants acted or refused to act on grounds generally applicable to the Class and Subclass, so
9 that final injunctive relief or corresponding declaratory relief is appropriate as to the Class and
10 Subclass as a whole.

11 60. In the alternative, the common questions of fact and law, *supra*, are appropriate
12 for issue certification on behalf of the proposed Class and Subclass under Fed. R. Civ. P.
13 23(c)(4).

14 61. Plaintiffs reserve the right to revise the foregoing class allegations and definitions
15 based on facts learned and legal developments following additional investigation, discovery, or
16 otherwise.

17 **CLAIMS FOR RELIEF**

18 **CLAIM 1**

19 **BREACH OF EXPRESS WARRANTY**

20 62. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

21 63. Plaintiffs bring this claim individually and on behalf of the members of the
22 proposed Class and Subclass against Defendants for breach of express warranty.

23 64. Defendants manufactured, distributed, packaged, labeled, marketed, and sold the
24 SanDisk SSDs into the stream of commerce with the intent that the SanDisk SSDs would be
25 purchased by Plaintiffs and the Class and Subclass.

26 65. Defendants expressly warranted, advertised, and represented to Plaintiffs and the
27 Class and Subclass that the SanDisk SSDs were effective at storing Plaintiffs' and Class
28 Members' and Subclass Members' data.

1 Defendants made these express warranties regarding the SanDisk SSDs' quality and fitness for
2 use in writing through its website, advertisements, and marketing materials and on the SanDisk
3 SSDs' packaging and labels. These express warranties became part of the basis of the bargain
4 that Plaintiffs and the Class and Subclass entered into upon purchasing the SanDisk SSDs. These
5 affirmations of fact and/or promises became part of the basis of the bargain, and the contract, that
6 Plaintiffs and the Class and Subclass entered into with Defendants upon purchasing the SanDisk
7 SSDs. Defendants' advertisements, warranties, and representations were made in connection
8 with the sale of the SanDisk SSDs to Plaintiffs, the Class, and the Subclass. Plaintiffs, the Class,
9 and Subclass relied on Defendants' advertisements, warranties, and representations regarding the
10 SanDisk SSDs in deciding whether to purchase Defendants' products.

11 66. Defendants' products do not conform to Defendants' affirmations of fact and
12 promises in that they are not effective at storing data.

13 67. Defendants therefore breached their express warranties by placing products into
14 the stream of commerce and selling them to consumers, when their use had negative effects, and
15 were unusable for its stated purpose, rendering these products unfit for their intended use and
16 purpose, and unsuitable for consumer use as marketed by Defendants. These associated defects
17 substantially impair the use, value, and safety of the SanDisk SSDs.

18 68. Defendants were aware, or should have been aware, of the presence of the defects
19 in the SanDisk SSDs and therefore were aware or should have been aware of effects of the use of
20 the SanDisk SSDs on consumers, but nowhere on the package labeling on Defendants' websites,
21 or other marketing materials did Defendants warn Plaintiffs and members of the Class and
22 Subclass of the potential for loss of data from the SanDisk SSDs.

23 69. Instead, Defendants concealed the defect in the SanDisk SSDs and deceptively
24 represented that the SanDisk SSDs were safe, of a certain quality, fast, rugged, were effective at
25 storing data, and appropriate for use. Defendants thus utterly failed to ensure that the material
26 representations it was making to consumers were true.

27 70. The defects were present in the SanDisk SSDs when they left Defendants'
28 possession or control and were sold to Plaintiffs, members of the Class and Subclass. The

1 dangers associated with use of the SanDisk SSDs were undiscoverable by Plaintiffs, members of
2 the Class and Subclass at the time of purchase of the SanDisk SSDs.

3 71. Defendants are the manufacturer, marketer, advertiser, distributor, labeler, and
4 seller of the SanDisk SSDs and thus had exclusive knowledge and notice of the fact that the
5 SanDisk SSDs did not conform to the affirmations of fact and promises.

6 72. In addition, or in the alternative, to the formation of an express contract,
7 Defendants made each of the above-described representations to induce Plaintiffs and members
8 of the Class and Subclass to rely on such representations.

9 73. Defendants' affirmations of fact and promises were material, and Plaintiffs and
10 members of the Class and Subclass reasonably relied upon such representations in purchasing the
11 SanDisk SSDs.

12 74. All conditions precedent to Defendants' liability for its breach of express
13 warranty have been performed by Plaintiffs or members of the Class or Subclass.

14 75. Affording Defendants an opportunity to cure its breaches of written warranties
15 would be unnecessary and futile here. Defendants had ample opportunity to test their products
16 for defects and to modify their manufacturing processes to ensure the defect was not present in
17 the SanDisk SSDs to make them effective for use by Plaintiffs and members of the Class and
18 Subclass.

19 76. As a direct and proximate result of Defendants' breaches of express warranty,
20 Plaintiffs and members of the Class and Subclass have been damaged because they did not
21 receive the products as specifically warranted by Defendants. Plaintiffs and members of the
22 Class and Subclass did not receive the benefit of the bargain and suffered damages at the point of
23 sale stemming from their payment and/or overpayment for the SanDisk SSDs.

24 77. Plaintiffs and the Class and Subclass seek actual damages, injunctive and
25 declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder
26 for Defendants' failure to deliver goods conforming to their express warranties and resulting
27 breach.

28

CLAIM 2

BREACH OF IMPLIED WARRANTY

78. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

79. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclass against Defendants for breach of implied warranty of merchantability.

80. Defendants are a merchant, manufacturer, marketer, warrantor, and seller of goods—the SanDisk SSDs—to Plaintiffs and the Class and Subclass and knew or had reason to know of the specific use for which the SanDisk SSDs were purchased.

81. Plaintiffs and the proposed Class and Subclass are consumers who purchased the SanDisk SSDs manufactured, sold, and marketed by Defendants throughout the United States.

82. An implied warranty that the SanDisk SSDs were merchantable arose by operation of law as part of the sale of the SanDisk SSDs.

83. At all times mentioned herein, Defendants manufactured, distributed, or supplied the products, and prior to the time the SanDisk SSDs were purchased by Plaintiffs and members of the Class and Subclass, Defendants impliedly warranted to them that the SanDisk SSDs were of merchantable quality, fit for their ordinary and intended use, and conformed to the promises and affirmations of fact made on the SanDisk SSDs labels and packaging, including that the SanDisk SSDs were effective at storing data. Plaintiffs and the Class and Subclass relied on Defendants’ promises and affirmations of fact when they purchased the SanDisk SSDs.

84. Defects existed in the SanDisk SSDs when the SanDisk SSDs left Defendants’ possession or control and were sold to Plaintiffs and members of the proposed Class and Subclass. The presence of defects in the SanDisk SSDs was undiscoverable by Plaintiffs and members of the proposed Class and Subclass at the time of their purchases.

85. Contrary to these representations and warranties, the SanDisk SSDs were not merchantable or reasonably fit for either the use they were intended or the uses reasonably foreseeable by Defendants and did not conform to Defendants’ affirmations of fact and promises

1 as use of the SanDisk SSDs was accompanied by the risk of failure or data loss, which does not
2 conform to the packaging.

3 86. Defendants breached its implied warranties by selling products that failed to
4 conform to the promises or affirmations of fact made on the packaging or label. Defendants had,
5 and have, exclusive knowledge of the material facts concerning the defective nature of the
6 SanDisk SSDs.

7 87. Defendants were, or should have been, on notice of this breach, as they were on
8 notice that the process used to manufacture the SanDisk SSDs was likely to result in the presence
9 of defects in the SanDisk SSDs.

10 88. Furthermore, Plaintiffs and members of the proposed Class and Subclass were at
11 all material times the intended third-party beneficiaries of Defendants and their agents in the
12 distribution of the sale of their products. Defendants exercise substantial control over the outlets
13 that sell the SanDisk SSDs, which are the same means by which Plaintiff and members of the
14 proposed Class and Subclass purchased the SanDisk SSDs. Defendants' warranties are not
15 intended to apply to distributors but are instead intended to apply to consumers, including
16 Plaintiffs and the proposed Class and Subclass, to whom Defendants directly markets through
17 labels and product packaging, and who review the labels and product packaging in connection
18 with their purchases. As a result, the warranties are designed and intended to benefit the
19 consumers, including Plaintiffs and the proposed Class and Subclass, who purchase the SanDisk
20 SSDs. Privity therefore exists based on the foregoing and because Defendants impliedly
21 warranted to Plaintiffs and the proposed Class and Subclass through the packaging that the
22 SanDisk SSDs were safe and suitable for their intended use.

23 89. As a direct and proximate result of Defendants' conduct, Plaintiffs, the Class, and
24 the Subclass have suffered actual damages in that each of the SanDisk SSDs they purchased is
25 worth less than the price they paid and/or that they would not have purchased at all if they had
26 known of the attendant loss of data and defects associated with the use of each of the SanDisk
27 SSDs.

1 learn or discover that the SanDisk SSDs were misrepresented in the packaging, labels,
2 advertising, and websites prior to purchasing the SanDisk SSDs; (4) Defendants' packaging and
3 labels disclosed misleading information to consumers by omitting that the SanDisk SSDs contain
4 defects; and (5) based on Defendants' partial statements on the SanDisk SSDs' labels and
5 packaging that gave a misleading impression to reasonable consumers that the SanDisk SSDs are
6 suitable for use, without further information on the presence defects had not been disclosed,
7 Defendants assumed the obligation to make a full and fair disclosure of the whole truth.

8 104. Defendants know their customers trust the quality of their products and that they
9 expect the SanDisk SSDs to be suitable for use and to not have risk of data loss.

10 105. Due to the omissions on the SanDisk SSDs' packaging, Defendants had a duty to
11 disclose the whole truth about the presence, and material risk, in the SanDisk SSDs to Plaintiffs
12 and the proposed Class and Subclass. Defendants failed to discharge its duty to disclose the
13 presence of defects in the SanDisk SSDs.

14 106. The facts concealed or not disclosed by Defendants to Plaintiffs, the Class, and
15 the Subclass were material in that a reasonable consumer would have considered them important
16 when deciding whether to purchase the SanDisk SSDs.

17 107. Plaintiffs, the Class, and the Subclass justifiably relied on Defendants' omissions
18 to their detriment. The detriment is evident from the true quality, characteristics, and defects of
19 the SanDisk SSDs, which is inferior when compared to how the SanDisk SSDs are advertised
20 and represented by Defendants.

21 108. As a direct and proximate result of Defendants' conduct, Plaintiffs, the Class, and
22 the Subclass have suffered actual damages in that they purchased the SanDisk SSDs that were
23 worth less than the price they paid and/or that they would not have purchased at all had they
24 known of defects of the SanDisk SSDs which do not conform to the SanDisk SSDs' labels,
25 packaging, advertising, and statements.

26 109. Plaintiffs, the Class, and the Subclass seek actual damages, injunctive and
27 declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the
28 laws.

CLAIM 5

NEGLIGENT MISREPRESENTATION

110. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

111. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclass against Defendants for negligent misrepresentation.

112. Because Defendants have superior knowledge regarding the quality of their products and because Plaintiffs and members of the proposed Class and Subclass trust and rely on Defendants to provide accurate and truthful information regarding the SanDisk SSDs, which Plaintiffs and members of the proposed Class and Subclass cannot ascertain on their own, Defendants had a duty to Plaintiffs, the Class, and the Subclass to exercise reasonable and ordinary care in the developing, testing, manufacture, marketing, distribution, and sale of the SanDisk SSDs.

113. Defendants breached their duty to Plaintiffs, the Class, and the Subclass by developing, testing, manufacturing, advertising, marketing, distributing, and selling products to Plaintiffs, the Class, and the Subclass that did not have the, qualities, characteristics, and suitability for use as advertised by Defendants.

114. Defendants packaged, labeled, marketed, and advertised the SanDisk SSDs in a manner indicating that the SanDisk SSDs were and are, among other things, suitable for use. However, the SanDisk SSDs contained, or were at risk of containing, defects, which does not conform to the packaging. Therefore, Defendants have made misrepresentations about the SanDisk SSDs.

115. Defendants' misrepresentations regarding the SanDisk SSDs are material to a reasonable consumer because they relate to the quality of the SanDisk SSDs, which the consumer is receiving and paying for. A reasonable consumer would attach importance to such representations and would be induced to act thereon in deciding whether or not to purchase the SanDisk SSDs.

116. At all relevant times when such misrepresentations were made, Defendants knew or had been negligent in not knowing that the SanDisk SSDs contained, or were at risk of

1 containing, defects which caused the loss of consumers' data. Defendants have no reasonable
2 grounds for believing its misrepresentations were not false and misleading.

3 117. Defendants knew or should have known that the qualities and characteristics of
4 the SanDisk SSDs were not as advertised or suitable for their intended use and were otherwise
5 not as warranted and represented by Defendants yet continued selling the SanDisk SSDs.
6 Specifically, Defendants knew or should have known that: (1) the manufacturing process used to
7 produce the SanDisk SSDs resulted in the presence of defects in the SanDisk SSDs or a
8 substantial risk that defects would be found in the SanDisk SSDs, and (2) the SanDisk SSDs
9 were otherwise not as warranted and represented by Defendants.

10 118. Defendants intended that Plaintiffs and members of the proposed Class and
11 Subclass would rely on these representations, as evidenced by the intentional and conspicuous
12 placement of the misleading representations on the SanDisk SSDs' packaging by Defendants, as
13 well as its advertising, marketing, and labeling of the SanDisk SSDs as, among other things,
14 suitable for use.

15 119. Plaintiffs and members of the proposed Class and Subclass have reasonably and
16 justifiably relied on Defendants' negligent misrepresentations when purchasing the SanDisk
17 SSDs, and had the correct facts been known, would not have purchased the SanDisk SSDs at all,
18 or would have paid less for them.

19 120. As a direct and proximate result of Defendants' conduct, Plaintiffs, the Class, and
20 the Subclass have suffered actual damages in that they purchased the SanDisk SSDs that were
21 worth less than the price they paid and/or that they would not have purchased at all had they
22 known they contained, or had a material risk of containing, defects that caused substantial loss of
23 personal data, which does not conform to the products' labels, packaging, advertising, and
24 statements.

25 121. Plaintiffs, the Class, and the Subclass seek actual damages, injunctive and
26 declaratory relief, attorneys' fees, costs, and any other just and proper relief available.

CLAIM 6

UNJUST ENRICHMENT

1
2
3 122. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

4 123. Plaintiffs bring this claim individually and on behalf of the members of the
5 proposed Class and Subclass against Defendants for unjust enrichment.

6 124. Plaintiffs, the Class, and the Subclass conferred substantial benefits on
7 Defendants through their purchase and use of the SanDisk SSDs. Defendants knowingly and
8 willingly accepted and enjoyed these benefits. Defendants either knew or should have known
9 that the payments rendered by Plaintiffs, the Class, and the Subclass were given with the
10 expectation that the SanDisk SSDs would have the qualities, characteristics, and suitability for
11 use represented and warranted by Defendants. As such, it would be inequitable for Defendants to
12 retain the benefit of the payments under these circumstances when Plaintiffs and the proposed
13 Class and Subclass did not receive the benefit of the SanDisk SSDs for which they bargained.

14 125. Defendants' acceptance and retention of these benefits under the circumstances
15 alleged herein make it inequitable for Defendants to retain the benefits without payment of the
16 value to Plaintiffs, the Class, and the Subclass because Defendants' labeling of the SanDisk
17 SSDs was misleading to consumers, which caused injuries to Plaintiffs and the proposed Class
18 and Subclass because they would not have purchased the SanDisk SSDs or would have paid less
19 for the SanDisk SSDs had they known that they contained, or had a material risk of containing
20 defects which caused the substantial loss of personal data.

21 126. As a direct and proximate result, Plaintiffs, the Class, and the Subclass are entitled
22 to recover from Defendants all amounts wrongfully collected and improperly retained by
23 Defendants, plus interest thereon.

24 127. Plaintiffs and the proposed Class and Subclass seek restitution, disgorgement,
25 imposition of a constructive trust, and/or other appropriate injunctive and declaratory relief, and
26 any other just and proper relief available under the laws.
27
28

CLAIM 7

CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT
Cal. Civ. Code §1750, *et seq.*
(On behalf of Plaintiffs Perrin and Bayerl, and the Class)

128. Plaintiffs Perrin and Bayerl incorporate the forgoing allegations as if fully set forth herein.

129. Defendants conduct with respect to the SanDisk SSDs took place in substantial part within California.

130. Plaintiffs Perrin and Bayerl have provided Defendants notice of the specific complaint in accordance with Cal. Civ. Code §1761.

131. Plaintiffs Perrin and Bayerl have also filed an affidavit in accordance with Cal. Civ. Code §1780 concurrently with this Complaint.

132. Plaintiffs Perrin and Bayerl, and members of the Class and Subclass are “consumer[s]” as that term is defined in Cal. Civ. Code §1761(d).

133. The SanDisk SSDs are “goods,” as that term is defined in Cal. Civ. Code §1761(a).

134. Each Defendant is a “person” as that term is defined in Cal. Civ. Code §1761(c).

135. Each purchase of the SanDisk SSDs by Plaintiffs Perrin and Bayerl, and members of the Class and Subclass constituted a “transaction” as that term is defined in Cal. Civ. Code §1761(e).

136. Defendants’ conduct alleged herein violates the following provisions of California’s Consumers Legal Remedies Act (the “CLRA”):

- a. Cal. Civ. Code §1770(a)(5), by negligently, recklessly, and/or intentionally representing that the SanDisk SSDs were effective when in fact they contain, or have a material risk of defects which could cause a Product user to lose their data;
- b. Cal. Civ. Code §1770(a)(7), by negligently, recklessly, and/or intentionally representing that the SanDisk SSDs were of a particular standard, quality, or grade, when they were of another;

1 c. Cal. Civ. Code §1770(a)(9), by negligently, recklessly, and/or intentionally
2 advertising the SanDisk SSDs with intent not to sell them as advertised; and

3 d. Cal. Civ. Code §1770(a)(16), by representing that the SanDisk SSDs have been
4 supplied in accordance with previous representations when they have not.

5 137. Defendants were obligated to disclose the presence of, and material risk of,
6 defects in the SanDisk SSDs because: (a) Defendants had exclusive knowledge of the presence
7 of defects in the SanDisk SSDs that were not known or reasonably accessible to Plaintiffs Perrin
8 and Bayerl and members of the Class and Subclass; (b) Defendants actively concealed the
9 presence of defects in the SanDisk SSDs from Plaintiffs Perrin and Bayerl, and members of the
10 Class and Subclass; and (c) Defendants made partial statements on the SanDisk SSDs labels and
11 packaging that gave the misleading impression to reasonable consumers, including Plaintiffs
12 Perrin and Bayerl, and members of the Class and Subclass, without further information on the
13 presence of defects that had not been disclosed.

14 138. Plaintiffs Perrin and Bayerl, and members of the Class and Subclass relied on
15 Defendants' representations when purchasing the SanDisk SSDs.

16 139. Plaintiffs Perrin and Bayerl, and members of the Class and Subclass were
17 deceived by Defendants' deceptive, fraudulent, and unconscionable acts and practices in that had
18 they known the truth they would not have purchased the SanDisk SSDs or would have paid less
19 for the SanDisk SSDs.

20 140. As a direct and proximate result of these violations, Plaintiffs Perrin and Bayerl,
21 and members of the Class and Subclass have been harmed, and that harm will continue unless
22 Defendants are enjoined from using the misleading marketing described herein in any manner in
23 connection with the advertising and sale of the SanDisk SSDs.

24 141. Defendants' deceptive trade practices caused injury in fact to Plaintiffs Perrin and
25 Bayerl, and members of the Class and Subclass in the form of the loss or diminishment of value
26 of the SanDisk SSDs Plaintiffs and members of the Class and Subclass purchased, which
27 allowed Defendants to profit at the expense of Plaintiffs and members of the Class and Subclass.
28

1 142. Defendants’ unlawful conduct is continuing, with no indication of Defendants’
2 intent to cease this fraudulent course of conduct, posing a threat of future harm to Plaintiffs and
3 members of the Class and Subclass, such that prospective injunctive relief is necessary.

4 **CLAIM 8**

5 **CALIFORNIA’S FALSE ADVERTISING LAW**
6 **Cal. Bus. & Prof. Code §17500, *et seq.***
7 **(On behalf of Plaintiffs Perrin and Bayerl, and members of the Class and Subclass)**

8 143. Plaintiffs Perrin and Bayerl incorporate the foregoing allegations as if fully set
9 forth herein.

10 144. Plaintiffs Perrin and Bayerl, and members of the Class and Subclass purchased
11 the SanDisk SSDs through connections stemmed in substantial part from California. California’s
12 False Advertising Law prohibits any statement in connection with the sale of goods “which is
13 untrue or misleading.” Cal. Bus. & Prof. Code §17500.

14 145. Defendants’ untrue and misleading statements significantly impacted the public
15 because Defendants sells the SanDisk SSDs nationwide, including in California, and there are
16 millions of consumers of the SanDisk SSDs, including Plaintiffs Perrin and Bayerl, and members
17 of the Class and Subclass.

18 146. As set forth herein, Defendants’ claims that the SanDisk SSDs were and are of a
19 certain quality and fit for their intended use by individuals were false because the SanDisk SSDs
20 in fact contain, or have a material risk of containing, defects, which could cause a user to suffer
21 substantial loss of personal data from use of the SanDisk SSDs and were likely to deceive the
22 public.

23 147. Defendants’ claims that the SanDisk SSDs were and are fit for use by individuals
24 were and are untrue and misleading because they failed to mention the presence of defects,
25 which could cause a product user to suffer adverse substantial loss of personal data from use of
26 the SanDisk SSDs.

27 148. Defendants’ representations and omissions were material because they were likely
28 to deceive reasonable consumers to induce them to purchase the SanDisk SSDs without being
aware that the SanDisk SSDs contained or had a material risk of containing defects.

1 149. Defendants knew, or reasonably should have known, that all these claims were
2 untrue or misleading and likely to deceive the public.

3 150. As a direct and proximate result of Defendants' false advertising, Plaintiffs Perrin
4 and Bayerl, and members of the Class and Subclass have been harmed, and that harm will
5 continue unless Defendants are enjoined from using the misleading marketing described herein
6 in any manner in connection with the advertising and sale of the SanDisk SSDs.

7 151. As a direct and proximate result of Defendants' false advertising, Plaintiffs Perrin
8 and Bayerl, and members of the Class and Subclass suffered damages by purchasing the SanDisk
9 SSDs because they received a product that was worthless, and/or worth less, because it contains,
10 or has a material risk of containing, defects, and they would not have purchased or would have
11 paid less for the SanDisk SSDs had they known this fact.

12 152. Defendants' false advertising caused injury in fact and actual damages to
13 Plaintiffs and the members of the Class and Subclass in the form of the loss or diminishment of
14 value of the SanDisk SSDs Plaintiffs and the members of the Class and Subclass purchased,
15 which allowed Defendants to profit at the expense of Plaintiffs and the members of the Class and
16 Subclass.

17 153. Defendants' unlawful conduct is continuing, with no indication of Defendants'
18 intent to cease this fraudulent course of conduct, posing a threat of future harm to Plaintiffs
19 Perrin and Bayerl, and members of the Class and Subclass, such that prospective injunctive relief
20 is necessary. Plaintiffs Perrin and Bayerl, and members of the Class and Subclass are entitled to
21 injunctive and equitable relief and restitution in the amount they spent on the SanDisk SSDs, as
22 well as any other just and proper relief, pursuant to Cal. Bus. & Prof. Code §17535 and
23 applicable law.

CLAIM 9

CALIFORNIA’S UNFAIR COMPETITION LAW

Cal. Bus. & Prof. Code §17200, *et seq.*

(On behalf of Plaintiffs Perrin and Bayerl, and members of the Class and Subclass)

154. Plaintiffs Perrin and Bayerl incorporate the foregoing allegations as if fully set forth herein.

155. Plaintiffs Perrin and Bayerl, and members of the Class and Subclass purchased the SanDisk SSDs through connections which stemmed in substantial part from California.

156. The California Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

157. For the reasons discussed herein, Defendants violated and continues to violate California’s Unfair Competition Law by engaging in the herein described fraudulent, deceptive, unfair acts or practices proscribed by Cal. Bus. & Prof. Code §17200, *et seq.* Defendants’ acts and practices, including their material omissions, described herein, were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

158. Defendants fraudulently represented that the SanDisk SSDs were and are fit for use by individuals when in fact they contain, or have a material risk of containing, defects, which could cause a SanDisk SSDs user to lose substantial personal data from use of the SanDisk SSDs.

159. As alleged herein, Defendants unlawfully advertised the SanDisk SSDs using false or misleading claims, such that Defendants’ actions as alleged herein violate at least the following laws:

- a. California Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*;
- b. California False Advertising Law, Cal. Bus. & Prof. Code §§17500, *et seq.*

160. Defendants’ conduct with respect to the labeling, packaging, advertising, marketing, and sale of the SanDisk SSDs is also unfair because it violates public policy as

1 declared by specific constitutional, statutory, or regulatory provisions, including, but not limited
2 to, the California Consumers Legal Remedies Act and the California False Advertising Law.

3 161. Defendants' conduct with respect to the labeling, packaging, advertising,
4 marketing, and sale of the SanDisk SSDs is also unfair because the consumer injury is
5 substantial, not outweighed by benefits to consumers or competition, and not one that consumers,
6 themselves, can reasonably avoid.

7 162. As a direct and proximate result of Defendants' false advertising, Plaintiffs Perrin
8 and Bayerl, and members of the Class and Subclass have been harmed, and that harm will
9 continue unless Defendants are enjoined from using the misleading marketing described herein
10 in any manner in connection with the advertising and sale of the SanDisk SSDs.

11 163. As a direct and proximate result of Defendants' fraudulent, unfair, and unlawful
12 practices, Plaintiffs Perrin and Bayerl, and members of the Class and Subclass suffered damages
13 by purchasing the SanDisk SSDs because they received a product that was worthless, and/or
14 worth less, because it contains, or has a material risk of containing, defects, and they would not
15 have purchased or would have paid less for the SanDisk SSDs had they known this fact.

16 164. Defendants' fraudulent, unfair, and unlawful practices caused injury in fact and
17 actual damages to Plaintiffs Perrin and Bayerl, and members of the Class and Subclass in the
18 form of the loss or diminishment of value of the SanDisk SSDs Plaintiffs Perrin and Bayerl, and
19 members of the Class and Subclass purchased, which allowed Defendants to profit at the expense
20 of Plaintiffs Perrin and Bayerl, and members of the Class and Subclass.

21 165. In accordance with Cal. Bus. & Prof. Code §17203, Plaintiffs Perrin and Bayerl,
22 and members of the Class and Subclass seek an order enjoining Defendants from continuing to
23 conduct business through fraudulent, unfair, or unlawful acts and practices. Defendants'
24 misconduct is continuing, with no indication of Defendants' intent to cease this fraudulent,
25 unlawful, and unfair course of conduct, posing a threat of future harm to Plaintiffs Perrin and
26 Bayerl, and members of the Class and Subclass, such that prospective injunctive relief is
27 necessary.

1 173. Defendants repeatedly advertised on the labels for SanDisk SSDs, on their
2 websites, and through national advertising campaigns, among other items, that SanDisk SSDs
3 would have the qualities, characteristics, and suitability for use. Defendants failed to disclose the
4 material information that SanDisk SSDs contained or materially risked containing defects which
5 cause substantial loss of personal data.

6 174. Defendants' representations and omissions were material because they were likely
7 to deceive reasonable consumers to induce them to purchase SanDisk SSDs without being aware
8 the SanDisk SSDs contained or materially risked containing these defects. As a direct and
9 proximate result of Defendants' unfair and deceptive acts or practices, Plaintiffs Perrin, Bayerl
10 and members of the Florida Subclass suffered damages by purchasing SanDisk SSDs because
11 they would not have purchased SanDisk SSDs had they known the truth, and they received a
12 product that was worthless and/or worth less, because it contained or materially risks containing
13 defects which cause substantial loss of personal data.

14 175. Defendants' deceptive trade practices caused injury in fact and actual damages to
15 Plaintiffs Perrin, Bayerl, and members of the Florida Subclass in the form of the loss of
16 diminishment of value of the SanDisk SSDs Plaintiffs Perrin, Bayerl, and members of the Florida
17 Subclass purchased, which allowed Defendants to profit at the expense of Plaintiff Perrin,
18 Bayerl, and members of the Florida Subclass. The injuries to Plaintiff Perrin, Bayerl, and
19 members of the Florida Subclass were legally protected interests. The gravity of the harm of
20 Defendants' actions is significant and there is no corresponding benefit to consumers of such
21 conduct.

22 176. Defendants' unlawful conduct is continuing, with no indication of Defendants'
23 intent to cease this fraudulent course of conduct, posing a threat of future harm to Plaintiffs
24 Perrin, Bayerl, and members of the Florida Subclass, such that prospective injunctive relief is
25 necessary.

26 177. Plaintiffs Perrin, Bayerl, and members of the Florida Subclass seek relief for the
27 injuries they have suffered as a result of Defendants' unfair and deceptive acts and practices,
28 including but not limited to, actual damages, restitution, penalties, injunctive and declaratory

1 relief, attorneys' fees and/or costs, as well as any other just and proper relief, as provided by Fla.
2 Stat. §501.211 and applicable law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray
5 for judgment against Defendants as to each count, including:

6 A. An order certifying this action as a class action, certifying the Class and Subclass
7 requested herein, designating Plaintiffs as the representatives of the Class and Subclass,
8 appointing Plaintiffs' counsel as counsel to the Class and Subclass, and requiring Defendants to
9 bear the costs of a class action;

10 B. An order declaring that Defendants' actions constitute: (i) breach of express
11 warranty; (ii) breach of the implied warranty of merchantability; (iii) fraudulent
12 misrepresentation; (iv) fraud by omission; (v) negligent misrepresentation; (vi) unjust
13 enrichment; and (vii) unfair and deceptive business practices in violation of the identified state
14 law consumer protection statutes, and that Defendants are liable to Plaintiffs, members of the
15 Class, and members of the Subclass, as described herein, for the relief arising therefrom;

16 C. An order enjoining Defendants from selling the SanDisk SSDs until defects are
17 eliminated or full disclosure of the presence of defects appears on all labels, packaging, and
18 advertising, and requiring Defendants to remove any defects which cause, among other things,
19 the substantial loss of personal data;

20 D. An order awarding declaratory relief, and any further retrospective or prospective
21 injunctive relief permitted by law or equity, including enjoining Defendants from continuing the
22 unlawful practices alleged herein, and injunctive relief to remedy Defendants' past conduct;

23 E. A judgment awarding Plaintiffs and members of the Class and Subclass all
24 appropriate economic, monetary, actual, statutory, and consequential damages, in an amount to
25 be determined at trial;

26 F. A judgment awarding Plaintiff and members of the Class and Subclass restitution
27 and/or disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs
28

1 and members of the Class and Subclass as the result of its unlawful, unfair, and fraudulent
2 business practices described herein;

3 G. A judgment awarding Plaintiffs and members of the Class and Subclass
4 prejudgment and post-judgment interest, as permitted by law;

5 H. A judgment awarding Plaintiffs and members of the Class and Subclass punitive
6 damages, as allowed by law;

7 I. A judgment awarding Plaintiffs and members of the Class and Subclass costs and
8 fees, including attorneys' fees, as permitted by law; and

9 J. For such further relief that the Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs demand a trial by jury for all issues so triable.

12 DATED: August 17, 2023

Respectfully submitted,

13 **BERMAN TABACCO**

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