

1 Alan M. Mansfield, SBN: 125998
2 WHATLEY KALLAS, LLP
3 16870 W. Bernardo Drive, Suite 400
4 San Diego, CA 92127
5 Phone: (619) 308-5034
6 Email: amansfield@whatleykallas.com

7 *Attorney for Plaintiff*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 EMILIO POUSA, both individually
12 and on behalf of all others similarly
13 situated,

14 Plaintiff,

15 v.

16 WESTERN DIGITAL
17 TECHNOLOGIES, INC.; and
18 DOES 1-10,

19 Defendants.

CASE NO.: _____

CLASS ACTION COMPLAINT FOR:

- 20 1) BREACH OF CONTRACT;
- 21 2) BREACH OF EXPRESS WARRANTIES;
- 22 3) BREACH OF IMPLIED WARRANTIES OF
23 MERCHANTABILITY AND FITNESS FOR
24 PARTICULAR PURPOSE;
- 25 4) VIOLATION OF CAL. BUS. & PROF.
26 CODE § 17200, ET SEQ.
- 27 5) COMMON COUNTS (ALTERNATIVE
28 CLAIM)

DEMAND FOR JURY TRIAL ON ALL
CLAIMS SO TRIABLE

22 Plaintiff Emilio Pousa (“Plaintiff”), on behalf of himself and all others similarly
23 situated, hereby files this Class Action Complaint against Defendants Western Digital
24 Technologies, Inc. and DOES 1-10 (collectively “Defendants” or “Western Digital”), and
25 alleges as follows on information and belief (except for information as to Plaintiff
26 identified herein as being based on personal knowledge), which allegations are likely to
27 have evidentiary support after a reasonable opportunity for further investigation and
28 discovery:

1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. § 1332(d) because there are more than 100 Class members and the aggregate
4 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and at
5 least one Class member is a citizen of a state different from Defendants. This Court also
6 has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

7 2. This Court has personal jurisdiction over Defendants because Defendants are
8 based in California, have sufficient minimum contacts with California, either directly or
9 through their subsidiaries, and/or have otherwise purposely availed themselves of the
10 markets in California through the promotion, marketing, and sale of their products and
11 services in California, for distribution both throughout and from California, and are
12 otherwise based here, to render the exercise of jurisdiction by this Court permissible under
13 traditional notions of fair play and substantial justice.

14 3. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants
15 maintain substantial operations in this District and are based here, many Class members
16 either reside or engaged in transactions in this District, Defendants engaged in business
17 and made representations in this District, and a substantial part of the events or omissions
18 giving rise to the claims at issue occurred in this District.

19 **PARTIES**

20 4. On personal knowledge, Plaintiff Emilio Pousa is a citizen of California and
21 resides in Los Angeles County. Plaintiff purchased two Western Digital SanDisk Extreme
22 pro SSDs V2 4TB and two V1 4TB Extreme Pro SSD portable solid-state hard drives
23 (“SSDs”) for a sum certain of \$1,399. 50 plus tax in December 2022 from Defendants’
24 authorized retailer B&H Photo. These SSDs are now essentially worthless to him since,
25 for the reasons detailed below, the drives failed and/or Plaintiff can no longer trust using
26 the drives. He cannot return the drives for a full refund, and has expended money to either
27 retrieve lost data and/or to obtain a replacement hard drive as well as suffered other
28 damages. A material factor in Plaintiff deciding to purchase these solid-state hard drives

1 at the prices he did was for the essential purpose and core functionality of solid-state hard
2 drives – to safely and reliably store, save and retain data so that such data can be retrieved
3 for later use. Plaintiff previously contacted Defendants about the ability of Plaintiff to
4 obtain compensation for his losses. Defendants have so far failed to do so.

5 5. Defendant Western Digital is a corporation organized and existing under the
6 laws of the State of California and whose principal place of business and headquarters is
7 in the State of California and this District. Western Digital is engaged in the business of
8 designing, manufacturing, selling and/or distributing solid-state hard drives, including the
9 SanDisk Extreme Pro SSD portable solid-state hard drives at issue here. It is the parent
10 company for SanDisk and the warrantor of the devices at issue. Defendants develop and
11 ship their products to purchasers, resellers and distributors in and from California,
12 maintain a sales force and customer service department in California, sell their products
13 through retail outlets in California, and create the website, specifications, advertisements
14 and reviewers’ guides referring to their products in and/or disseminate them from
15 California.

16 6. The true and precise names, roles and capacities of Defendants named as
17 Does 1 through 10, inclusive, are currently unknown to Plaintiff and, therefore, are
18 designated and named as Defendants under fictitious names. Plaintiff will identify their
19 true identities and their involvement in the wrongdoing at issue if and when they become
20 known.

21 7. Defendants’ conduct described herein was undertaken or authorized by
22 officers or managing agents who were responsible for supervision and operations
23 decisions relating to the design, manufacture, distribution, marketing, advertising and/or
24 sale by Defendants of the Western Digital SanDisk Extreme Pro SSD portable solid-state
25 hard drives here at issue. At all times relevant hereto, Defendants were engaged in the
26 business of designing, manufacturing, distributing and/or selling, either directly or
27 indirectly through third parties and authorized resellers or agents, these series of SanDisk
28 Extreme Pro SSD portable solid-state hard drives throughout and from California. The

1 described conduct of said managing agents and individuals was therefore undertaken on
2 behalf of Defendants in substantial part in and from California. Defendants further had
3 advance knowledge of the actions and conduct of said individuals whose actions and
4 conduct were ratified, authorized, and/or approved by Defendants and/or their managing
5 agents.

6 8. Each of the above-named Defendants acted in concert and both aided and
7 abetted and conspired with each other to either misrepresent or not disclose the material
8 facts stated herein, with such conduct authorized and/or acted on by and through their
9 officers, employees, agents, servants, and/or representatives.

10 9. Each reference made in this Complaint to any corporate Defendant in this
11 Complaint includes its predecessors, successors, parents, subsidiaries, affiliates, and
12 divisions of the corporation for the corresponding time period in any way involved in the
13 design, manufacture, promotion, distribution and/or sale of these solid-state hard drives.

14 **SUMMARY OF FACTS**

15 10. This is a class action lawsuit brought on behalf of individuals who purchased
16 the 500GB, 1terabyte (“1 TB”), 2 terabyte (“2TB”) or 4 terabyte (“4TB”) versions of the
17 SanDisk Extreme Pro SSD line of portable solid-state hard drives designed, manufactured,
18 distributed, promoted and/or sold by Defendants, including the SanDisk Extreme Pro,
19 Extreme Portable, Extreme Pro Portable, and WD MyPassport SSD models (hereinafter
20 collectively referred to herein as the “Extreme Pro SSD hard drives”).¹ SanDisk Extreme
21 Pro SSD hard drives are portable solid-state drives (“SSDs”) that offer high-speed data
22 transfer and storage.

23 11. Despite Defendants’ representations to the contrary, based on a latent defect
24 in manufacturing and/or design that was not reasonably discoverable by Plaintiff and Class
25 members at time of purchase, the SanDisk Extreme Pro SSD portable solid-state hard
26 drives do not function as reasonably expected. The SanDisk Extreme Pro SSD hard drives,
27

28 ¹ Plaintiff reserves the right to add additional models as investigation and discovery progresses.

1 which are also sold under the WD MyPassport brand, have either a manufacturing defect
2 or firmware issue (or both) that causes them to disconnect or become unreadable by
3 computers. Without warning these hard drives have wiped out or lost data stored on them,
4 making the files stored on them unable to be accessed and users unable or unwilling to use
5 these drives out of the reasonable concern such data will be lost forever or cost hundreds
6 if not thousands of dollars to recover.

7 12. This is not an isolated incident. Numerous individuals have publicly
8 complained of data being wiped out with no action on the part of Class members that
9 resulted in this data being wiped out; their computers not be able to access these hard
10 drives when they are plugged in; and/or concerns their businesses will be impacted if the
11 defect manifests, requiring them to spend significant additional time and resources to
12 prevent such a potential from taking place.

13 13. As part of Western Digital's marketing scheme, promotion and advertising
14 for the Extreme Pro SSD hard drives, Western Digital uniformly stated through their
15 website, reviewers' guides, product labeling, packaging and associated documentation,
16 advertising and/or user fora that the Extreme Pro SSD hard drives were fit for their
17 intended purpose of storing and saving data for later retrieval. Western Digital has made
18 representations on its website about these products such as, for example, that "From the
19 brand trusted by professional photographers worldwide, the SanDisk Extreme PRO
20 Portable SSD provides powerful solid state performance in a rugged, dependable storage
21 solution", and "Get powerful NVMe™ solid state performance featuring 2000MB/s2
22 read/write speeds in a portable drive that's reliable enough to take on any adventure".²
23 Defendants' marketing of these hard drives thus was intended to and did create the
24 reasonable expectation among purchasers that these Extreme Pro SSD hard drives were,
25 in fact, able to conform with these specifications.

26 14. Western Digital in promoting these SanDisk Extreme Pro SSD portable solid-
27

28 ² <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd#SDSSDE81-1T00-G25> (last accessed August 19, 2023).

1 state hard drives focused on their excellence and reliability. However, Because of
2 limitations inherent in their manufacture and/or design, Western Digital SanDisk Extreme
3 Pro SSD portable solid-state hard drives suffer or are likely to suffer during their useful
4 lifetime from this inherent defect of being unable to be detected by computers and/or
5 wiping out data without warning. Class members were also exposed to these and other
6 similar representations or omissions of material fact, which were consistently made either
7 directly or indirectly by Defendants.

8 15. On personal knowledge, Plaintiff is a professional
9 photographer/videographer who works in the film and commercial industry, and thus
10 needs and relies on multiple SSDs to ensure his work is safely retained. In or about
11 December 2022, these drives failed shortly following their first use by Plaintiff. Plaintiff
12 was filming a commercial for a client and lost all of the footage he saved on those SSDs
13 and thus was unable to timely provide such footage, to his detriment. He purchased and
14 tried using Disk Drill and Disk Warrior recovery software, which each cost him
15 approximately \$50, but both were unsuccessful recovering such data. Plaintiff demanded
16 a full refund and sent these SSDs to Western Digital in or about January 2023. They
17 refused to provide him a full refund. While Defendants have claimed they will send
18 Plaintiff replacement SSDs, despite repeated requests for the past eight months he has still
19 not received any replacement drives from Defendants. Thus, despite several demands
20 therefor he has received neither refunds or replacement drives from Defendants. As he can
21 no longer rely on these SSDs he has also been forced to pay money for replacement drives
22 manufactured by Samsung, spending at least an additional \$1,400 for these replacement
23 drives, even though they do not possess the same characteristics as the Western Digital
24 drives he purchased, and is concerned he may lose clients and/or future business from
25 those clients as a result of the failure of these SSDs and the resulting loss of data that has
26 already manifested.

27 16. Before purchasing Western Digital SanDisk Extreme Pro SSD portable solid-
28 state hard drives, Plaintiff was exposed to, reviewed, read and/or saw materials that

1 referenced either generally or specifically the basic characteristics of these hard drives to
2 store and retrieve data. This promise is expressly part of the basis of the bargain between
3 the parties. Plaintiff based his decision to purchase these SanDisk Extreme Pro SSD
4 portable solid-state hard drives in substantial part upon the accuracy of such material
5 representations and omissions of material fact to the contrary.

6 17. Plaintiff has suffered a loss of money or property and suffered damage as a
7 result of Defendants' illegal practices. Plaintiff purchased a SanDisk solid- state hard drive
8 for which he overpaid and that he considers worthless and unusable as it was not provided
9 in accordance with the benefit of the promised bargain by Defendants, and for which he
10 had to expend money to attempt to repair the devices and/or replace them with other
11 devices for which he has not been compensated or received suitable replacements. Plaintiff
12 would not have purchased the solid-state hard drive at the prices he did have the true facts
13 stated herein been timely disclosed by Defendants. Plaintiff has now purchased disc
14 recovery software and other solid-state hard drives and spent significantly more money in
15 order to obtain the benefit of his original bargain and was unable to timely provide services
16 he was paid to provide. Plaintiff has also spent considerable time and resources attempting
17 to resolve these issues without the need to seek court intervention, without success.

18 18. Class members have widely reported drive failures and data loss using the
19 SanDisk Extreme Pro, Extreme Portable, Extreme Pro Portable, and WD MyPassport SSD
20 portable solid-state hard drives. Users of these hard drives have reported that when they
21 plug in these portable hard drives they receive the following message: "The disk you
22 attached was not readable by this computer." They did not receive the benefit of their
23 bargain in receiving the product they paid for in terms of not possessing the basic
24 characteristics set forth above.

25 19. Defendants have made material representations and omissions of material
26 facts, both to Plaintiff and presumptively to members of the Class, about the basic
27 functionality of these SanDisk Extreme Pro SSD portable solid-state hard drives. The
28 ability of these drives to save, store and retrieve data was not in fact true and/or Defendants

1 omitted material facts to the contrary.

2 20. Defendants concealed material facts concerning the truth about the SanDisk
3 Extreme Pro SSD portable solid-state hard drives' capabilities to store, access and retrieve
4 data, or the inability to consistently do so. Defendants uniformly failed to disclose latent
5 defects in the SanDisk Extreme Pro SSD portable solid-state hard drives, despite likely
6 having evidence to the contrary in their exclusive possession and control during all or a
7 majority of the time they were offering these hard drives to the public.

8 21. A series of SanDisk Extreme Pro SSD portable solid-state hard drives thus
9 do not conform with their core functionality, as well as Western Digital's basic promise
10 that the hard drives they sell will do what they are supposed to do— store data safely for
11 later access.

12 22. Defendants' misrepresentations and omissions of material fact alleged herein
13 are the type that would be material to typical product purchasers, including Plaintiff,
14 because a reasonable person interested in purchasing these types of portable hard drives
15 would attach importance to knowing they would function for their essential purpose.
16 Portable hard drives that delete data or cannot be accessed without warning would be a
17 material factor to Class members, and was a material factor considered by Plaintiff. Class
18 members and Plaintiff thus would be induced to act, and were induced to act, positively
19 on the representations and omissions of material facts in Defendants' possession to the
20 contrary in making their purchase decisions, at least in material part. The affirmative
21 misstatements made either directly or indirectly by Defendants, and Defendants' uniform
22 omission of the material facts set forth above, were likely to be and/or are material and
23 misleading to reasonable individuals targeted by Defendants into purchasing these
24 SanDisk Extreme Pro SSD portable solid-state hard drives.

25 23. Plaintiff and Class members were exposed to Defendants' misrepresentations
26 and omissions of material fact and purchased at least one SanDisk Extreme Pro SSD
27 portable solid-state hard drive. As they purchased these devices at the prices they did in
28 substantial part based on the false belief that these hard drives would function and not

1 delete data without warning, such claims were a substantial factor in the decisions of
2 Plaintiff and other Class members to do so at the prices they paid. Plaintiff and the Class
3 members were thus sold products that do not perform or possess the basic capabilities,
4 uses or benefits advertised and represented, contained a latent design or manufacturing
5 defect that prevents these SanDisk Extreme Pro SSD portable solid-state hard drives from
6 operating as intended, and are effectively worthless to them.

7 24. Considering the targeted demographic for these devices, Defendants have put
8 Plaintiff and Class members into an impossible situation. Either they must use these drives
9 knowing the drives may lose data without warning that cannot be re-created, and all
10 Defendants will do if that happens is provide them a replacement device, or they are forced
11 to buy another drive that Defendants will refuse to compensate them for because their
12 original drive has not failed, even though can no longer trust it to do what they purchased
13 it for in the first place. For Class members, this drive is effectively worthless, entitling
14 them to a full refund of the amounts they paid for their SanDisk Extreme Pro SSD portable
15 solid-state hard drives and any additional damages they may have incurred as a result of
16 such purchase and/or use.

17 25. Class members were uniformly exposed to Defendants' marketing scheme
18 and paid a premium for these SanDisk Extreme Pro SSD portable solid-state hard drives.
19 Because the claims at issue were included in advertisements, marketing, reviewer's
20 guides, labelling, packaging, documents and/or agreements accompanying these SanDisk
21 Extreme Pro SSD portable solid-state hard drives, a reasonable person would likely be
22 misled into believing these hard drives were capable of safely storing and retrieving data
23 saved on them, when that was not in fact the case.

24 26. Defendants thus engaged in a scheme to mislead consumers about the
25 characteristics, qualities, uses and benefits of the SanDisk Extreme Pro SSD portable
26 solid-state hard drives. Plaintiff and/or the Class members suffered damage, injury and/or
27 a loss of money or property as a result of such conduct.

28 27. Western Digital is aware of this issue. Defendants either have known or

1 should have known about the existence of this defect for months through product testing
2 prior to release. In addition, after initial reports of hard drive failure and data loss
3 associated with these drives, Defendants admitted generally to a problem with the drives'
4 firmware. According to SanDisk, one issue is caused by a bug in the firmware version
5 R332G190 that was released in July 2023. This bug affects some SanDisk Extreme and
6 SanDisk Extreme PRO SSDs with capacities of 500GB, 1TB, and 2TB. The bug can cause
7 the drive to enter a read-only mode, which means that the user cannot write any new data
8 to the drive or delete any existing data. The bug can also cause the drive to become
9 undetected by the computer or show an incorrect capacity. Defendants also issued a
10 firmware fix for a variety of drives they manufacture, including the SanDisk Extreme Pro
11 SSD, in late May 2023 [<https://support-en.wd.com/app/firmwareupdate>], and sent out
12 replacement drives to some consumers in June 2023. This firmware update supposedly
13 was intended to stop the 2TB and 4TB models of these drives from wiping data on the
14 hard drive. Yet according to reports from individuals who installed this fix, this firmware
15 fix is not stopping this defect from taking place, as there are reports of this defect
16 manifesting in SanDisk Extreme Portable SSD V2, SanDisk Extreme Pro Portable SSD
17 V2, and WD My Passport SSD hard drives even after this firmware fix.

18 28. Not only are these errors being recently reported by a number of users of
19 these portable hard drives, but users also are reporting manifestation of this defect even
20 on replacement hard drives distributed by Western Digital just a couple of months ago to
21 replace allegedly defective hard drives that had been previously sold and had failed.

22 29. According to reports of calls by customers to SanDisk customer support,
23 some of these SSD hard drives cannot be replaced because, according to customer support,
24 the 4TB models of the SanDisk Extreme Pro SSD were being recalled. However, there is
25 no evidence that Western Digital is actively engaged in a widely announced product recall
26 for these hard drives.

27 30. Such conduct is on-going. As of now, Western Digital is not warning
28 customers and retailers who have already purchased these drives or may purchase these

1 drives in the future that significant data loss is possible, how these drives are defective and
2 the causes of the defects, why the firmware fix is not resolving the issue and whether hard
3 drives currently for sale in the market have the same unremedied defect.

4 31. Western Digital is not even presently acknowledging this issue exists.
5 Western Digital recently admitted in or about June 2023 on its website and user fora that
6 “We have identified a firmware issue that presents itself in very limited situations and can
7 cause SanDisk Extreme Portable SSD V2, SanDisk Extreme Pro Portable SSD V2, and
8 WD My Passport SSD products to unexpectedly disconnect from a computer”.³ However,
9 this admission is misleading as this is not what, in fact, happens. It is not simply a
10 connection issue – data is being lost without warning, and hundreds of Class members are
11 reporting an inability to access and retrieve data they have stored on their devices or that
12 such data is missing. This representation by Defendants is thus misleading as it is
13 fundamentally different than not disclosing to users they may lose data entirely through
14 no fault of their own and without warning. Western Digital’s “admission” misleads and
15 induces or is likely to induce Class members when deciding to either continue to use the
16 devices or buy the defective drives into believing they understand the nature of defect and
17 the risk that defect represents, when, in fact, they do not.

18 32. Despite being aware of the actual specifications of the SanDisk Extreme Pro
19 SSD portable solid-state hard drives and the latent defects described above, Defendants
20 advertised, marketed, distributed and/or sold the SanDisk Extreme Pro SSD portable solid-
21 state hard drives to Plaintiff and Class members by advertising characteristics, uses and
22 benefits that were false, misleading, and/or likely to mislead them, and sold SanDisk
23 Extreme Pro SSD portable solid-state hard drives that contained a latent design and/or
24 manufacturing defect that prevented Defendants from being able to comply with their prior
25 representations, commitments, warranties and promises. At or about the time Defendants
26 were selling these SanDisk Extreme Pro SSD portable solid-state hard drives to Plaintiff

27
28 ³ <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd#SDSSDE81-1T00-G25> (last accessed Aug. 19, 2023).

1 and Class members, Defendants would have had access to the internal technical
2 specifications for these hard drives that should have revealed the existence of this defect.
3 Far from being unforeseen, Defendants in all likelihood would have had information in
4 their possession for either all or a large part of the time they were selling these SanDisk
5 Extreme Pro SSD portable solid-state hard drives that they contained the material defect
6 described above, and thus omitted material facts to the contrary in their possession and
7 not generally available to the public. Defendants have failed to engage in a corrective
8 advertising campaign to correct the public misperceptions created by their original
9 conduct, nor made any significant effort to withdraw or correct these representations.

10 33. These SanDisk Extreme Pro SSD portable solid-state hard drives are
11 marketed without either affirmatively disclosing these material limitations or having
12 engaged in a corrective promotional campaign to correct their previous misstatements.
13 While Western Digital offered to replace certain of these hard drives that have been
14 compromised and manifested this defect, they are only offering replacement drives, which
15 may be used and have been reported to have the same issue. Defendants are presently not
16 offering refunds, repayment of the costs to consumers to hire a company to perform data
17 recovery services for lost data or purchase replacement back-up drives, payment for time
18 lost attempting to recover lost data or re-input it, lost business, or other costs experienced
19 by Class members who have had this defect manifest. Nor are they offering refunds to
20 those consumers who are concerned such a defect will manifest in the future and can no
21 longer trust their SSD hard drive from failing, making their SanDisk Extreme Pro SSD
22 portable solid-state hard drives effectively worthless to them.

23 34. Plaintiff and others have previously made demands to Western Digital asking
24 Defendants to offer an appropriate refund, replacement or other remedy and/or provide
25 notice to all affected Class members to correct this problem and make their customers
26 whole. Western Digital has so far failed and refused to fully remediate this issue to ensure
27 Class members receive the full benefit of their bargain despite demand therefor being
28 made on behalf of Plaintiff and Class members, thus making any further demands futile

1 and necessitating this action.

2 35. While Plaintiff is now aware of the misleading nature of Defendants' current
3 advertising, he would consider ordering and using SanDisk Extreme Pro SSD portable
4 solid-state hard drives in the future if, in fact, Defendants disclosed truthful information
5 about these devices and actually fixed the latent defect causing the problems at issue here.
6 Defendants have yet to change their labeling and advertising practices, or improve the
7 SanDisk Extreme Pro SSD portable solid-state hard drives to conform to their advertising
8 claims. Given Defendants' ongoing business acts and practices, Plaintiff will be unable to
9 rely on such advertising or labeling in the future, and so will not purchase these products
10 although he would like to.

11 36. Plaintiff has standing to seek injunctive relief and seeks damages, injunctive
12 and equitable relief, attorneys' fees and costs and all other relief as permitted by law on
13 behalf of himself and all others similarly situated, as applicable to the causes of action set
14 forth herein.

15 **CLASS ACTION ALLEGATIONS**

16 37. Plaintiff brings this action on behalf of a proposed class ("Class"), defined as
17 follows:

18 All persons in the United States who purchased a SanDisk
19 Extreme Pro SSD portable solid-state hard drive, including the
20 SanDisk Extreme Pro, Extreme Portable, Extreme Pro Portable,
and WD MyPassport SSD models, at retail since at least January
2022.

21 Excluded from the Class definition are the following individuals or entities:

- 22 (a) All assigned judicial officers, staff and their families;
23 (b) Retailer purchasers of these devices who obtained them for purposes
24 of resale or distribution; and
25 (c) Defendants and any of their officers, directors, and employees.

26 38. This action is brought and may properly be maintained as a class action as
27 this action satisfies the numerosity, commonality, typicality, adequacy, predominance,
28 and/or superiority requirements for proceeding on a class-wide basis.

1 39. The Class is so numerous that the individual joinder of all members is
2 impracticable. The exact number of Class members is currently unknown and can only be
3 ascertained through appropriate discovery. Plaintiff believes that the Class includes tens
4 if not hundreds of thousands of individuals.

5 40. Common legal and factual questions exist and predominate over any
6 questions affecting only individual Class members. These common questions, which do
7 not vary among Class members and which may be determined without reference to Class
8 member's individual circumstances, include, but are not limited to:

9 (a) Whether Defendants' representations regarding the SanDisk Extreme
10 Pro SSD portable solid-state hard drives were false or misleading or reasonably likely to
11 deceive customers targeted by such statements;

12 (b) Whether Defendants breached both express and implied warranties;

13 (c) Whether Defendants' failure to disclose that the SanDisk Extreme Pro
14 SSD portable solid-state hard drives did not perform as advertised was material and would
15 be likely to mislead a reasonable consumer;

16 (d) Whether the SanDisk Extreme Pro SSD portable solid-state hard drives
17 perform as advertised and represented in terms of their upgrade capabilities;

18 (e) Whether Defendants entered into and breached applicable agreements
19 or warranties that are either express or implied by law or equity;

20 (f) Whether Defendants engaged in unfair, unlawful, and/or fraudulent
21 business practices or false or misleading advertising regarding the SanDisk Extreme Pro
22 SSD portable solid-state hard drives in violation of Cal. Bus. & Prof. Code § 17200 and §
23 17500, et seq. and the other laws stated herein;

24 (g) Whether Plaintiff and the Class have been injured by the wrongs
25 complained of herein, and whether Plaintiff and the Class are entitled to monetary,
26 injunctive and/or other equitable relief, including damages, restitution, disgorgement or
27 other applicable remedies, and if so, the nature and amount of such relief.

28 41. Based on the allegations set forth above, Plaintiff's claims are typical of the

1 Class members' claims. Defendants' common course of conduct caused Plaintiff and Class
2 members similar types of harm. Likewise, Plaintiff and other Class members can prove
3 the same common nucleus of operative facts in order to establish Defendants' liability for
4 the same claims.

5 42. Plaintiff and his counsel are adequate Class representatives. Their interests
6 do not irreconcilably conflict with other Class members' interests. Plaintiff has retained
7 counsel competent and experienced in consumer protection class actions, and they intend
8 to prosecute this action vigorously for the Class's benefit and will fairly and adequately
9 protect the Class members' interests.

10 43. Defendants have acted or refused to act, with respect to some or all issues
11 presented in this Complaint, on grounds generally applicable to the Class, thereby making
12 appropriate final injunctive relief with respect to the Class as a whole.

13 44. A class action is superior to other available methods for the fair and efficient
14 adjudication of this litigation and would provide substantial benefits to members of the
15 Class because individual litigation of each Class member's claim is impracticable. Even
16 if each Class member could afford to bring individual actions, the court system could not
17 as it would be unduly burdensome for thousands of individual cases to proceed. Individual
18 litigation also presents the potential for inconsistent or contradictory judgments, the
19 prospect of a race to the courthouse, and the risk of an inequitable allocation of recovery
20 among those with equally meritorious claims. Individual litigation would increase the
21 expense and delay to all parties and the courts because it requires individual resolution of
22 common legal and factual questions. By contrast, the class action device presents far fewer
23 management difficulties and provides the benefit of a single adjudication, economies of
24 scale, and comprehensive supervision by a single court and thus is manageable.

25 **CAUSES OF ACTION**

26 **FIRST CAUSE OF ACTION**

27 **Breach of Contract**

28 45. Plaintiff, individually and on behalf of the Class, incorporates by reference

1 all of the allegations contained in the preceding paragraphs of this Complaint.

2 46. By virtue of the written materials accompanying the SanDisk Extreme Pro
3 SSD portable solid-state hard drives, as well as product advertising that Plaintiff and Class
4 members were exposed to and which were directed to the Class members, Western Digital
5 expressly extended an offer to Plaintiff and Class members and agreed that these SanDisk
6 Extreme Pro SSD portable solid-state hard drives would perform in accordance with their
7 essential purpose of safely saving and later retrieving data without risk of loss without
8 warning.

9 47. In terms of product advertising, these statements and claims constituted a
10 specific offer, as it invited performance of a specific act or taking a particular action (e.g.,
11 purchase of the SanDisk Extreme Pro SSD portable solid-state hard drives in question)
12 without further communication and leaving nothing for negotiation. In making such offers
13 and statements, Defendants in clear and positive terms promised to provide to Plaintiff
14 and Class members SanDisk Extreme Pro SSD portable solid-state hard drives that would
15 perform their essential function.

16 48. Plaintiff and Class members were exposed to this offer and in response
17 accepted it and paid consideration therefor, thus performing their part of the contract, and
18 concluding the parties' bargain to purchase and sell SanDisk Extreme Pro SSD portable
19 solid-state hard drives. Defendants sold SanDisk Extreme Pro SSD portable solid-state
20 hard drives directly to consumers through website and/or by linking directly from their
21 websites to retailer sites for the purchase of these products. In addition, as set forth above,
22 both in terms of product advertising and promotional statements and publications for re-
23 publication to Plaintiff and the Class, Defendants made direct offers to Plaintiff and Class
24 members that promised the specific characteristic of the SanDisk Extreme Pro SSD
25 portable solid-state hard drives performing in accordance with their basic function. In
26 addition, to the extent the SanDisk Extreme Pro SSD portable solid-state hard drives were
27 purchased by consumers from authorized retailers and agents and not through a link on
28 the Western Digital website, the retail sellers of these goods were not intended by

1 Defendants to be the ultimate consumers of the SanDisk Extreme Pro SSD portable solid-
2 state hard drives and were merely a pass-through entity. Plaintiff and Class members were
3 the intended, ultimate users of the SanDisk Extreme Pro SSD portable solid-state hard
4 drives, as such statements on product packaging, labeling and advertising would be of no
5 benefit or relevance to the retailers. As such, any agreements for the sale of the SanDisk
6 Extreme Pro SSD portable solid-state hard drives, to the extent found to be not directly
7 entered into between Defendants and Plaintiff and Class members, were designed for and
8 intended to expressly benefit the ultimate users only as the beneficiaries of these promises
9 by Western Digital. Thus, as any agreements regarding the purchase and sale of the
10 SanDisk Extreme Pro SSD portable solid-state hard drives were intended to benefit the
11 ultimate consumers and not the retailers, Plaintiff and Class members are the intended
12 rather than incidental third-party beneficiaries of such agreements as the ultimate
13 purchasers and users of these products.

14 49. As set forth in detail above, Defendants have breached these agreements as
15 they are unable or unwilling to honor such agreements. Plaintiff and Class members thus
16 are unable to receive the benefit of their bargain.

17 50. Defendants are not relieved of their contractual obligations because of their
18 alleged inability to resolve this issue, and their failure to do so does not excuse the
19 nonperformance of a contract. Moreover, performance of this contractual commitment is
20 possible by Defendants providing a replacement non-defective SanDisk Extreme Pro SSD
21 portable solid-state hard drive to Plaintiff and Class members at no added cost, along with
22 appropriate compensation for additional expenditures of time and money and damages
23 occasioned by the presence of this defect. Since such performance is not inherently
24 impossible, and there was an unconditional promise and offer to perform made by
25 Defendants as set forth above that was accepted by Plaintiff and Class members,
26 Defendants' non-performance is a breach even though the appropriate remedy is within
27 their control (i.e., replacing a nonconforming product with a conforming one at no
28 additional cost, or offering full refunds to Plaintiff and Class members in addition to

1 payment of damages).

2 51. As a result of this breach, Plaintiff and Class members have been damaged.
3 They are entitled to a SanDisk Extreme Pro SSD portable solid-state hard drive that
4 actually conforms with Defendants' original agreements at no additional cost, be given
5 the ability to return their SanDisk Extreme Pro SSD portable solid-state hard drives for a
6 full refund, and/or or are entitled to damages to compensate them for any losses they
7 suffered as a result of this breach, including but not limited to for the data being wiped out
8 with no action on the part of Class members, lost business or business opportunities, the
9 inability of their computers not be able to access these hard drives when they are plugged
10 in, their expenditure of significant additional time and resources to either redress this
11 defect from manifesting, purchasing recovery software or paying money to do so, and/or
12 the costs for alternative drives or other monies expended in either redressing this defect or
13 preventing such a potential from taking place.

14 52. Plaintiff and the Class and/or their representatives have made or by this
15 Complaint are making a demand to Defendants that they comply with these agreements
16 and offer all appropriate remedies available under the law to Plaintiff and all affected Class
17 members. Defendants so far have failed and/or refused to do so, necessitating this action.

18 **SECOND CAUSE OF ACTION**

19 **Breach of Express Warranties**

20 53. Plaintiff, individually and on behalf of the Class, incorporates by reference
21 all of the allegations contained in paragraphs 1 through 44 of this Complaint.

22 54. Defendants, as the primary designer, manufacturer, marketer, distributor,
23 and/or seller of the SanDisk Extreme Pro SSD portable solid-state hard drives, explicitly
24 and expressly warranted through their advertising and product packaging and labeling that
25 the SanDisk Extreme Pro SSD portable solid-state hard drives would perform in
26 accordance with the basic function of devices, which would be to safely store data for later
27 retrieval and that such data would not be deleted without notice or warning.

28 55. Defendants also provided direct express warranties. According to these

1 written warranties, "SanDisk provides this limited warranty to the end user purchaser
2 ("You"), that this product (the "Product"), excluding content and/ or software supplied
3 with or on the Product, will be free from material defects in manufacture, will conform to
4 SanDisk's published product specifications, and will be fit for normal use in accordance
5 with published instructions during the Warranty Period specified in the table commencing
6 on the date of purchase provided that the Product is legally placed on the market."⁴

7 56. No reliance need be shown by Plaintiff or Class members on such express
8 warranties in order to weave Defendants' affirmations of fact as to the defect-free features
9 of the SanDisk Extreme Pro SSD portable solid-state hard drives into the fabric of the
10 parties' agreement.

11 57. These warranties were provided directly to Plaintiff and Class members.
12 Defendants sold SanDisk Extreme Pro SSD portable solid-state hard directly through their
13 websites and/or by linking directly from their websites to retailer sites for the purchase of
14 these products, as well as through their authorized retailers for which Plaintiff and Class
15 members were the intended beneficiaries and/or are warranties that by their terms are
16 provided expressly to the end purchasers of these devices.

17 58. As set forth above, Defendants breached such express warranties as these
18 SanDisk Extreme Pro SSD portable solid-state hard drives fail to perform consistent with
19 the level of their bargained for functions, are not free from material defects in manufacture,
20 do not conform to the product's published product specifications in terms of the safe
21 storage and retention of data, and are not fit for normal use.

22 59. Plaintiff and Class members received drives that did not conform to these
23 express warranties and were worth less than the SanDisk Extreme Pro SSD portable solid-
24 state hard drives they were promised and reasonably expected to receive. In fact, based on
25 this failure of their core functionality, they are altogether worthless.

26
27
28 ⁴ https://documents.westerndigital.com/content/dam/doc-library/en_us/assets/public/sandisk/collateral/warranty/Retail_Warranty_US_Current_Version_011615.pdf (last accessed Aug. 19, 2023)

1 portable solid-state hard drives, because: (a) the SanDisk Extreme Pro SSD portable solid-
2 state hard drives could not pass without objection in the trade under the contract
3 description in that they are missing a key promoted characteristic of the devices; (b) the
4 SanDisk Extreme Pro SSD portable solid-state hard drives were not of fair average quality
5 within the product description; (c) the SanDisk Extreme Pro SSD portable solid-state hard
6 drives were not adequately advertised, packaged, and/or labeled as set forth above; or (d)
7 the SanDisk Extreme Pro SSD portable solid-state hard drives did not conform to the
8 promises or affirmations of fact made by Defendants.

9 66. Plaintiff and Class members did not receive goods as impliedly warranted by
10 Defendants to be “merchantable”, as these SanDisk Extreme Pro SSD portable solid-state
11 hard drives are missing a key characteristic that affected their core functionality – the
12 ability to safely store, save and retrieve data without the potential such data would be
13 wiped out or inaccessible without warning or any action taken by the user. This prevents
14 these SanDisk Extreme Pro SSD portable solid-state hard drives from meeting a minimal
15 level of quality and expected performance.

16 67. In addition, and as a separate basis to assert a claim for breach of the implied
17 warranty of merchantability, the failures set forth above constitute a latent defect that
18 existed at time of purchase for the reasons described above that was undiscoverable at
19 time of sale. If these defects were known the SanDisk Extreme Pro SSD portable solid-
20 state hard drives would not measure up to the descriptions given by Defendants. This
21 separately renders the SanDisk Extreme Pro SSD portable solid-state hard drives
22 unmerchantable. As this was a latent defect that existed at time of purchase for the reasons
23 described above, the implied warranty of merchantability was thus also breached by the
24 existence of an unseen defect in these SanDisk Extreme Pro SSD portable solid-state hard
25 drives at the time of sale, rather than upon its subsequent discovery. Such breach could
26 not reasonably have been determined at time of sale.

27 68. Defendants also breached the implied warranty of fitness for a particular
28 purpose as provided by law, including, *inter alia*, Cal. Comm. Code § 2316. Plaintiff and

1 Class members purchased the SanDisk Extreme Pro SSD portable solid-state hard drives
2 for a particular purpose (*i.e.*, safely storing and retrieving data, particularly video and
3 photographic data that could not be replicated). Because of this particular purpose, which
4 was specifically identified on Defendants' website as being a key characteristic of these
5 devices, Plaintiff and Class members could be reasonably expected to rely upon
6 Defendants' skill and judgment in properly providing SanDisk Extreme Pro SSD portable
7 solid-state hard drives with these specific capabilities and furnish goods suitable for this
8 particular purpose, and would have no reason to believe otherwise. As Plaintiff and other
9 Class members would have no way to know of the true facts based on the design of the
10 internal circuitry or firmware of the SanDisk Extreme Pro SSD portable solid-state hard
11 drives, Defendants had reason to know that these buyers were relying on the skill and
12 judgment of Defendants to furnish suitable goods that would satisfy this particular
13 purpose.

14 69. As the ability of storing and retrieving data without fear it would be deleted
15 without warning represents a particular purpose and characteristic of the SanDisk Extreme
16 Pro SSD portable solid-state hard drives, Defendants had reason to know of the particular
17 purpose of these purchases, and that purchasers would be relying on their skill and
18 judgment to ensure these SanDisk Extreme Pro SSD portable solid-state hard drives would
19 perform consistent with their specified represented purpose.

20 70. The SanDisk Extreme Pro SSD portable solid-state hard drives were not
21 altered by Plaintiff or Class members prior to use.

22 71. The SanDisk Extreme Pro SSD portable solid-state hard drives did not
23 conform to these implied warranties when they left the exclusive control of Defendants.

24 72. Defendants either were or should have been aware that the SanDisk Extreme
25 Pro SSD portable solid-state hard drives would be purchased and used by Plaintiff and
26 Class members without additional testing by them. In addition, Defendants either were or
27 should have been aware that these devices could not perform as intended.

28 73. Plaintiff and Class members did not receive these goods as impliedly

1 warranted, for the reasons set forth above.

2 74. All conditions precedent to seeking liability for breach of these implied
3 warranties have been performed by or on behalf of Plaintiff and Class members in terms
4 of paying for the goods at issue and Defendants having been placed on reasonable notice
5 of these breaches within a reasonable time after such breaches were discovered, and
6 having been given an opportunity to cure these breaches as to Plaintiff and all Class
7 members and provide compensation to them. Defendants have failed to repair or replace
8 the SanDisk Extreme Pro SSD portable solid-state hard drives with non-defective
9 products, voluntarily offered to take sufficient remedial measures, or otherwise provided
10 appropriate and complete relief and payment of damages at no cost to Plaintiff and Class
11 members.

12 75. As a direct and proximate cause of Defendants' breaches of implied
13 warranties, Plaintiff and Class members have been damaged, injured and harmed, in an
14 amount to be determined at trial.

15 **FOURTH CAUSE OF ACTION**

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

17 76. Plaintiff, individually and on behalf of the Class, incorporates by reference
18 all of the allegations contained in paragraphs 1 through 75 of this Complaint, except those
19 allegations seeking damages.

20 77. Plaintiff has suffered injury in fact and lost money or property as a result of
21 Defendants' actions, as set forth above.

22 78. Defendants' actions as alleged in this Complaint constitute "unfair" business
23 practices within the meaning of California Business and Professions Code § 17200, et seq.
24 Defendants' business practices, as alleged herein, are "unfair" because they offend
25 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or
26 substantially injurious to their customers. Additionally, Defendants' conduct is "unfair"
27 because Defendants' conduct violated legislatively declared policies not to engage in
28 misleading and deceptive conduct.

1 79. Defendants’ actions as alleged in this Complaint also constitute “fraudulent”
2 business practices and false and misleading advertising within the meaning of California
3 Business and Professions Code § 17200 and 17500, et seq., as Defendants’ business
4 practices were and are likely to deceive the targeted audience, including Plaintiff and
5 members of the Class, targeted by such statements and omissions of material fact and/or
6 which were known, or which by the exercise of reasonable care should be known by
7 Defendants, to be untrue or misleading. Defendants also misled consumers into believing
8 that the SanDisk Extreme Pro SSD portable solid-state hard drives had capabilities to be
9 safely store and retrieve data when, in fact, they did not. Defendants also failed to disclose
10 material information to purchasers of the SanDisk Extreme Pro SSD portable solid-state
11 hard drives by concealing the material fact that these devices do not or may not safely
12 store data for later retrieval and that such data may be deleted without notice or warning,
13 contrary to what was originally represented by Defendants or reasonably understood by
14 Plaintiff and Class members.

15 80. Defendants’ actions as alleged in this Complaint also constitute “unlawful”
16 business practices within the meaning of Business and Professions Code § 17200, et seq.,
17 because they breached applicable agreements and express and implied warranties and
18 violated California Civil Code § 1750, et seq., 15 U.S.C. § 2301, et seq., among other
19 laws.

20 81. As a result of Defendants’ business practices, Plaintiff and members of the
21 Class spent money on the SanDisk Extreme Pro SSD portable solid-state hard drives that
22 they would not otherwise have spent at the amounts charged by Defendants, and did not
23 receive the capabilities promised by Defendants as set forth above. They are thus entitled
24 to restitution and/or restitutionary disgorgement based on the difference in the value of
25 what they were promised – an operable portable solid-state hard drive that would save and
26 permit them to retrieve stored data and would not fail without warning – and the value of
27 what they received – an unreliable portable solid-state hard drive that they cannot rely on
28 or trust and thus is effectively worthless to them.

1 82. Defendants’ business practices alleged herein constitute a continuing course
2 of unfair competition.

3 83. Plaintiff seeks an order for injunctive relief, requiring Defendants to make
4 full restitutionary disgorgement and restitution of all monies wrongfully obtained from
5 Plaintiff and the Class members, and all other relief permitted under Bus. & Prof. Code §
6 17200, et seq.

7 **FIFTH CAUSE OF ACTION**

8 **Common Counts – Assumpsit, Restitution, Unjust Enrichment**

9 **And/or Quasi-Contract**

10 84. Plaintiff, individually and on behalf of the Class, incorporates by reference
11 all of the allegations contained in paragraphs 1 through 44 of this Complaint.

12 85. This cause of action is alleged as an alternative to the claims for relief set
13 forth in this Complaint based on breach of agreements and warranties, as permitted under
14 Fed. R. Civ. Proc. 8(d)(2).

15 86. Plaintiff and Class members plead just grounds for recovering money paid
16 for benefits Defendants received, and have a right to restitution at law through an action
17 derived from the common-law writ of assumpsit, by implying a contract at law based on
18 principles of restitution and unjust enrichment, or through quasi-contract.

19 87. Defendants, having been unjustly conferred a benefit by Plaintiff and Class
20 members through acts of mistake, fraud or request as set forth above, and having received
21 such benefits by encouraging Plaintiff and Class members to make such purchases using
22 misleading statements and omitting material facts as set forth in detail above, are required
23 to make restitution under principles of assumpsit. The circumstances here are such that, as
24 between the two, it is unjust for Defendants to retain such a benefit based on the conduct
25 described above. The measure of appropriate restitutionary damages is the full amount
26 paid by Plaintiff and Class members as they did not get the exchange that they expected.
27 The return of that benefit is the remedy typically sought for this cause of action, as such
28 money or property belongs in good conscience to Plaintiff and Class members, and can be

1 traced to funds or property in Defendants' possession. Plaintiff and Class members have
2 unjustly enriched Defendants through payments and the resulting profits enjoyed by
3 Defendants as a direct result of payments for the SanDisk Extreme Pro SSD portable solid-
4 state hard drives in question. Their detriment and Defendants' enrichment were related to
5 and flowed from the conduct challenged in this Complaint.

6 88. By virtue of the purchase and sale of these SanDisk Extreme Pro SSD
7 portable solid-state hard drives, Defendants alternatively entered into a series of implied-
8 at-law or quasi-contracts that resulted in a sum certain as stated above being had and
9 received by Defendants, either directly or indirectly, at the expense of Plaintiff and Class
10 members under agreements in assumpsit. Plaintiff and Class members conferred a benefit
11 upon Defendants by purchasing such SanDisk Extreme Pro SSD portable solid-state hard
12 drives. As set forth above, Plaintiff paid sum certain of \$1,399. 50 plus tax for the SanDisk
13 Extreme Pro SSD portable solid-state hard drives in question to authorized retailers of
14 Defendants for which Defendants received direct compensation. Defendants had
15 knowledge of the general receipt of such benefits, which Defendants received, accepted,
16 and retained. Defendants owe Plaintiff this specific amount, and Class members similar
17 specific sums that can be obtained either directly from Class members, Defendants or their
18 authorized retailers.

19 89. Under principles of restitution recognized as a separate cause of action under
20 California law, an entity that has been unjustly enriched at the expense of another by the
21 retention of a benefit wrongfully obtained is required to make restitution to the other. In
22 addition, under common law principles recognized in claims of common counts
23 (assumpsit, unjust enrichment, restitution, and/or quasi-contract), under the circumstances
24 alleged herein it would be inequitable for Defendants to retain such benefits without
25 paying restitution or restitutionary damages. Such principles require Defendants to return
26 such benefits when the retention of such benefits would unjustly enrich Defendants. They
27 should not be permitted to retain the benefits conferred by Plaintiff and Class members
28 via payments for these SanDisk Extreme Pro SSD portable solid-state hard drives. Other

1 remedies and claims may not permit them to obtain such relief, otherwise leaving them
2 without an adequate remedy at law. Plaintiff and Class members seek appropriate
3 monetary relief for sums certain as is permitted by law for such claims.

4 90. In addition, under principles of unjust enrichment that is recognized as a
5 separate cause of action, pursuant to California Civil Code § 2224, “[o]ne who gains a
6 thing by fraud, accident, mistake, undue influence, the violation of a trust, or other
7 wrongful act, is, unless he or she has some other and better right thereto, an involuntary
8 trustee of the thing gained, for the benefit of the person who would otherwise have had
9 it.” Based on the facts and circumstances alleged above, in order to prevent unjust
10 enrichment and to prevent Defendants from taking advantage of their own wrongdoing,
11 Plaintiff and Class members are further entitled to the payment of all amounts by which
12 Defendants were unjustly enriched and establishment of a constructive trust, in a sum
13 certain, of all monies charged and collected or retained by Defendants for the products at
14 issue from which Plaintiff and Class members may seek restitution.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of himself and the members of the Class,
17 requests that the Court order the following relief and enter judgment against Defendants
18 as follows as applicable for the particular cause of action:

19 1. An Order certifying the proposed Class and appointing Plaintiff and counsel
20 listed below to represent the Class;

21 2. An Order for injunctive relief including preventing Defendants from
22 continuing the practices as set forth herein and engaging in a corrective advertising
23 campaign and recall;

24 3. A judgment awarding Plaintiff and the Class refunds, restitution and/or
25 restitutionary disgorgement in an amount according to proof;

26 4. A judgment awarding Plaintiffs and the Class actual, compensatory, general,
27 special, and/or statutory damages to the extent permitted in the above Causes of Action in
28 an amount according to proof;

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

Emilio Pousa, both individually and on behalf of all others similarly situated,

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

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

Alan M. Mansfield, Whatley Kallas, LLP 16870 W. Bernardo Dr., Suite 400, San Diego, CA 92127 Tel: 619-308-5034

DEFENDANTS

Western Digital Technologies, Inc.; and DOES 1-10

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)

- 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)

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

Table with columns PTF and DEF for 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): 28 U.S.C. Section 1332(d)

Brief description of cause: Breach of contract and warranty for defective disk drives

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ greater than 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

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

JUDGE Freeman DOCKET NUMBER 5:23-cv-04152

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

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/22/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Alan M. Mansfield

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.