

United States District Court for the Northern District of California

# If you purchased a Western Digital WD Red NAS hard drive you may be entitled to a cash payment from a class action settlement.

*A federal court authorized this notice. It is not a solicitation from a lawyer.*

*You are not being sued. Please do not contact the Court.*

*Your legal rights are affected whether you act or don't act.*

*Read this notice carefully.*

## Overview

- Western Digital customers claimed in a class action lawsuit that Western Digital uses SMR (Shingled Magnetic Recording) technology in its WD Red NAS hard drives and that this fact is not disclosed to consumers. Western Digital denies that it did anything wrong or that SMR technology is inferior to other technology that could be used in the WD Red NAS drives. Defendant contends that its SMR-based Red NAS drives were designed and extensively tested for use in the applications for which they were marketed, and Western Digital believes that the drives perform well in, and are suitable for use in, NAS devices employed in appropriate applications and workloads. The customers and Western Digital have reached a proposed settlement to resolve the lawsuit on a class action basis, as described below.
- You are getting this notice because, you may be part of settlement class and may be eligible for a cash payment from the settlement.
- **IMPORTANT**: You must file a claim by November 27, 2021, to get a payment from the Settlement. Click [here](#) to file a claim. (Read below or see Questions 6-7 for more details)
- Questions? Read below, or visit [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com) or call 1-833-677-1089 for more information.

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## **Your Legal Rights and Options in this Lawsuit**

Your legal rights are affected, and you have a choice to make. Your options are explained here.

<b>File a claim</b>	File a claim by <b>November 27, 2021</b> , to receive a payment. See Questions 6-7.
<b>Do nothing</b>	Receive no payment and give up the right to sue Western Digital for the issues in this lawsuit.
<b>Opt out, receive no payment, and retain right to sue</b>	To opt out, you must mail a signed, written request for exclusion by <b>December 3, 2021</b> . See Question 11 for details.
<b>Object or comment on the settlement</b>	Object or comment on the Settlement by <b>December 3, 2021</b> . See Question 12 for details. If you object or comment, you can still file a claim and receive a payment.

## **Information About the Lawsuit and Class**

### **1. What is this lawsuit about?**

The lawsuit concerns Western Digital customers in the United States who purchased certain Western Digital hard drives with SMR technology.

Plaintiffs alleged that Western Digital represented its “WD Red NAS” hard drives to be designed and suitable for use in NAS (Network Attached Storage) devices because the drives use “SMR” (Shingled Magnetic Recording) technology. Nicholas Malone, Chris Ayers, James Backus, Brian Conway, David Eaton, Steven Gravel, James Raaymakers, and Tod Weitzel are the plaintiffs in the filed class action lawsuit against Western Digital. The operative complaint in this case is available at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com). Western Digital denies these allegations, denies that SMR is inferior technology, or that it did anything wrong. Defendant contends that its SMR-based Red NAS drives were designed and extensively tested for use in the applications for which they were marketed, and Western Digital believes that the drives perform well in, and are suitable for use in, NAS devices employed in appropriate applications and workloads.

Plaintiffs and Western Digital have now agreed to a settlement to resolve this lawsuit, as described below. The Court has not decided whether Plaintiffs or Western Digital are correct. By agreeing to the Settlement, neither Western Digital nor Plaintiffs make any admissions regarding the merits of the allegations, claims, or defenses in this case.

The United States District Court for the Northern District of California is overseeing this lawsuit. The lawsuit is known as *Malone v. Western Digital Corporation*, Case No. 5:20-cv-03584-NC.

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## **2. What is a class action?**

In a class action, one or more people sue on behalf of themselves and other people with similar claims. All of these people together make up the Settlement Class and are Settlement Class Members. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

## **3. Who is in the Settlement Class?**

The “Settlement Class” in this case is defined as:

All persons in the United States (including its states, districts or territories) who purchased a WD Red NAS Drive using Shingled Magnetic Recording (“SMR”) technology between October 2018 and July 21, 2021. The specific hard drive models are: WD20EFAX (2TB capacity), WD30EFAX (3TB capacity), WD40EFAX (4TB capacity), and WD60EFAX (6TB capacity) hard drives. Excluded from the Settlement Class are any Judge presiding over this Action, any members of their families, and Western Digital and affiliated entities and their respective officers and directors.

If you received a notice of this Settlement by mail or email, Western Digital’s records indicate that you may be in the Settlement Class. However, you are a Class Member if you fit within the Settlement Class regardless of whether you received notice by mail and/or email.

People in the Settlement Class are called “Settlement Class Members.”

## **Information about the Settlement and About Filing a Claim for a Payment**

## **4. What are the terms of the proposed settlement?**

The complete terms of the proposed settlement are set forth in the Settlement Agreement, which is available at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com). This notice provides only a summary of the terms of the Settlement. The Settlement benefits and other terms are summarized below.

## **5. What are the benefits of the proposed settlement?**

If the Settlement is approved and becomes final, Western Digital will pay \$2,700,000.00 into a Settlement Fund. This money will be used to: (1) make Settlement payments to Settlement Class Members for valid Claims, as described at Questions 6-9 below; (2) pay the costs of distributing notice and Settlement payment checks to Settlement Class Members and other costs of administering the Settlement; and (3) pay court-awarded attorneys’ fees and expenses of the attorneys appointed by the Court to represent the Class (“Settlement Class Counsel”) and any service awards granted to the Plaintiffs.

## 6. How do I get a payment?

You must file a **claim** by **November 27, 2021**, to receive a payment. Click [here](#) to file a claim.

## 7. How do I file a claim for a payment?

File Online: To file a claim online, click [here](#) or visit [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com).

File By Mail: If you prefer, you can also print a paper claim form, available at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com), fill it out, and mail it to the address listed on the form. Or, if you received notice of this Settlement by mail you can fill out the claim form that is attached to that notice, fill it out, and mail it to the address listed on the form.

**The deadline to file a claim online or by mail is November 27, 2021.** The Settlement Administrator will review all claims and determine eligibility.

## 8. How much will the payments be?

The Settlement payment amounts depend on the capacity of the WD Red NAS hard drive(s) purchased by the Settlement Class Member. The payment amounts for each type of hard drive could also vary based on how many valid claims are filed. It is currently estimated that:

- Purchasers of WD Red NAS Drives with 2TB capacity (WD20EFAX) or 3TB Capacity (WD30EFAX) will receive at least \$4.00 for each drive purchased, subject to pro-rata adjustment, if applicable.
- Purchasers of WD Red NAS Drives with 4 TB capacity (WD40EFAX) or 6TB capacity (WD60EFAX) will receive at least \$7.00 for each drive purchased, subject to pro-rata adjustment, if applicable.

If the amount used to pay eligible claims is less than the full value of the Settlement Fund (after payment of fees, costs, notice, administrative costs, and service awards), then each claimant's recovery will be increased on a pro rata basis up to a maximum of 85% of the MSRP value of the drive purchased. The MSRP value that will be used for a pro rata adjustment will be as follows: 2TB (MSRP \$84.99); 3 TB (MSRP \$106.99); 4 TB (MSRP \$119.99); 6TB (MSRP \$179.99).

For more information, read the Settlement Agreement, which is available at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com).

## 9. How and when will payments be sent?

Settlement payments will be issued to eligible Settlement Class Members by mailed check after the Settlement is approved and becomes final.

For any Settlement payment checks that are uncashed or deemed undeliverable by the Settlement Administrator, those amounts shall remain in the settlement fund pending further

order of the Court. Class Counsel shall make an application to the Court to seek approval for a proposed disposition of the unpaid funds from uncleared checks.

## **Your Other Rights and Options**

### **10. What happens if I do nothing?**

By doing nothing, you are staying in the Settlement Class but you will not receive any payment. You also will give up any right to sue Western Digital about the issues in this lawsuit. You will also be legally bound by all of the orders that the Court issues and judgments the Court makes in this class action.

### **11. How do I exclude myself (opt out) from the Settlement Class?**

To exclude yourself from the Settlement Class, you must mail a written request for exclusion to: Malone v. Western Digital Corporation, c/o JND Legal Administration, P.O. Box 11007, Seattle, WA 98111.

To be effective, your request for exclusion must be postmarked no later than **December 3, 2021**, and must include the following information:

- (a) your full name, telephone number, mailing address, and email address;
- (b) a clear statement that you wish to be excluded from the Settlement Class;
- (c) the name of this lawsuit: “Malone v. Western Digital Corporation”; and
- (d) your signature or the signature of an individual authorized to act on your behalf.

Requests for exclusion must be specific to individual Settlement Class Members, and Settlement Class Members cannot request exclusion as a class or group.

### **12. How do I object or comment?**

If you are a Settlement Class Member, and have not excluded yourself from the Settlement Class, you can comment on or object to the Settlement, Settlement Class Counsel’s request for attorneys’ fees and litigation expenses, and/or the request for service awards for the Plaintiffs who brought this lawsuit. To object or comment, you must send a written objection/comment including the following:

- (a) the name of this lawsuit: “Malone v. Western Digital Corporation”;
- (b) your full name, mailing address, telephone number, and email address;
- (c) your signature or the signature of an individual authorized to act on your behalf;
- (d) a description of the specific reasons for your objection;
- (e) the name, address, bar number, and telephone number of your attorney if you are represented by an attorney;
- (f) if you have an attorney assisting you with your objection or have objected to any class action in the previous 5 years, then you must identify your attorney and/or include a list of the cases in which you have previously objected by identifying each case by its caption or title; and

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(g) a statement about whether or not you intend to appear at the Final Approval Hearing either in person or through an attorney.

To be considered by the Court, your comment or objection must be sent to the Claims Administrator and must be postmarked no later than **December 3, 2021**, at the following address:

Malone v. Western Digital Corporation  
c/o JND Legal Administration  
P.O. Box 11007  
Seattle, WA 98111

Note that you can ask the Court to deny approval of the Settlement by filing an objection, but you can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement as agreed to by the Parties. If the Court denies approval, no Settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You have the right to consult with your own attorney, at your own expense, before deciding how best to proceed.

### **13. What claims will be released by this Settlement?**

If you are in the Settlement Class definition and do not exclude yourself from the Settlement Class, and the Settlement is approved and becomes final, the Settlement will be legally binding on you and you will be bound by all judgments entered in the case. In exchange for the Settlement benefits, you will release all claims against Western Digital and its affiliates listed in the Settlement Agreement about the issues in this lawsuit. The Settlement Agreement, available at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com), describes the claims you are releasing (giving up) by staying in the Settlement Class.

### **14. Do I have a lawyer in this class action?**

Yes. The Court has appointed the following attorneys and law firms to represent the Settlement Class Members. Together, these lawyers are called "Settlement Class Counsel":

Yitzchak Kopel  
Bursor & Fisher, P.A.  
888 Seventh Avenue  
New York, NY 10019  
(646) 837-7150

Daniel M. Hattis  
Hattis & Lukacs  
400 108<sup>th</sup> Avenue NE, Suite 500  
Bellevue, Washington 98004  
(425) 233-8650

You do not have to pay Settlement Class Counsel for their time or expenses incurred in this case out of your pocket. Instead, Settlement Class Counsel will petition the Court for an award of their fees and expenses; any amount awarded will be paid from the Settlement Fund.

The Court has also appointed Plaintiffs Nicholas Malone, Chris Ayers, James Backus, Brian Conway, David Eaton, Steven Gravel, James Raaymakers, and Tod Weitzel as class representatives to represent the Settlement Class.

Questions? Visit [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com) or call toll-free at 1-833-677-1089

**15. How will the lawyers be paid?**

Settlement Class Counsel (see Question 14) will file a motion on or before September 6, 2021, asking the Court to award them attorneys' fees and reimbursement of litigation expenses up to one-third of the total \$2.7 million Settlement Fund. The attorneys' fees and expenses awarded by the Court will be the only payment to Settlement Class Counsel for their efforts in achieving the Settlement and for their risk in undertaking this representation on a wholly contingent basis. In addition, Settlement Class Counsel will ask the Court on or before September 6, 2021, to award each of the Plaintiffs representing the Settlement Class a service award of \$2,500 to compensate them for their efforts and commitment on behalf of the Settlement Class in this lawsuit.

The Court will determine the amount of attorneys' fees, expenses, and service awards to award. Settlement Class Counsel's application for attorneys' fees, expenses, and service awards will be available at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com) when it is filed.

**16. Should I hire my own lawyer for this case?**

You do not need to hire your own lawyer because Settlement Class Counsel represents you and the other members of the Settlement Class already. However, you have the right to hire your own lawyer. If you want your own lawyer separate from Settlement Class Counsel, you will have to pay that lawyer.

**The Court's Final Approval Hearing**

**17. When and where will the Court decide whether to approve the settlement?**

The Court will hold a final approval hearing at 2:00 p.m., Pacific, on December 22, 2021, in the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5, 280 South 1st Street, San Jose, CA 95113. The hearing may be moved to a different date or time without additional notice and/or may be held remotely or telephonically. Please check [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com) for updates or changes.

At the final approval hearing, the Court will consider whether the Settlement should be approved as fair, reasonable and adequate. The Court will also consider Settlement Class Counsel's application for attorneys' fees, expenses, and service awards. If there are objections, the Court will consider them. At the hearing or some time thereafter, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**18. Do I have to come to the hearing?**

No. Settlement Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. So long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**19. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

**Getting More Information**

**20. Where can I get more information?**

More information can be found at [www.WDRedNASHarddriveSettlement.com](http://www.WDRedNASHarddriveSettlement.com). That website includes important case deadlines, links to case documents including the full Settlement Agreement and the complaint in this lawsuit, and other information about the lawsuit and the settlement. You can also get more information by calling **1-833-677-1089**, or by contacting Settlement Class Counsel at [info@bursor.com](mailto:info@bursor.com).

You can also get additional information by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Courthouse, 280 South 1st Street, 2nd Floor, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Please note, however, that physical access to the office of the Clerk of the Court may be limited or prohibited at times as a result of the COVID-19 pandemic. Please check the Court's website, <https://www.cand.uscourts.gov>, for updates.

**PLEASE DO NOT CONTACT THE COURT**