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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 NICHOLAS MALONE,  
CHRIS AYERS,  
11 JAMES BACKUS,  
DAVID EATON,  
12 STEVEN GRAVEL, and  
TOD WEITZEL,  
13 for Themselves, as Private Attorneys  
General, and/or On Behalf Of All  
14 Others Similarly Situated,  
15  
Plaintiffs,  
16 v.  
17 WESTERN DIGITAL CORPORATION,  
18 Defendant.

Case No. 5:20-cv-03584-NC

**FIRST AMENDED CLASS ACTION**

**COMPLAINT FOR:**

- (1) VIOLATION OF CAL. CIVIL CODE § 1750**
- (2) VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17500**
- (3) VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17200**
- (4) IN THE ALTERNATIVE, STATE CONSUMER PROTECTION LAW SUBCLASSES**

**JURY TRIAL DEMANDED**

19  
20 Plaintiffs Nicholas Malone, Chris Ayers, James Backus, David Eaton, Steven Gravel,  
21 and Tod Weitzel, individually, as private attorneys general, and/or on behalf of all others  
22 similarly situated, allege as follows, on personal knowledge and investigation of their counsel,  
23 against Defendant Western Digital Corporation (“WDC,” “Western Digital” or “Defendant”):  
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**INTRODUCTION AND SUMMARY**

1  
2 1. This case is brought against Western Digital Corporation on behalf of all United  
3 States residents who purchased certain hard drives which were branded “WD Red NAS” and  
4 were explicitly advertised and represented to be designed for and suitable for use in NAS  
5 (Network Attached Storage) devices, but which in fact are not suitable for that intended use and  
6 which put customer data at greater risk of data loss or destruction. The hard drives contain  
7 inappropriate recording technology called “SMR” (Shingled Magnetic Recording), which by its  
8 very nature is detrimental to and incompatible with usage in NAS devices and RAID storage  
9 systems. WDC surreptitiously snuck—without any disclosure whatsoever—this cheaper SMR  
10 technology into its WD Red NAS hard drives in 2018 in an effort to shave costs while keeping  
11 the selling price the same.

12 2. This inappropriate SMR technology replaced the more-expensive-to-produce but  
13 industry-standard “CMR” (Conventional Magnetic Recording) technology which WDC had  
14 previously utilized—for nearly a decade—in these very same “WD Red NAS” branded hard  
15 drives. Notably, WDC is the only hard drive manufacturer in the world who has ever used SMR  
16 technology in NAS-labeled hard drives; all other manufacturers have solely used CMR  
17 technology. In fact, WDC’s largest competitor, Seagate Technology, has publicly stated that  
18 SMR is incompatible with NAS and RAID.

19 3. WDC has been sneaking SMR technology into its NAS hard drives since 2018.  
20 WDC even designed these SMR drives in a way to hide the existence of the SMR technology,  
21 through drive-managed tricks which cause the drives to be recognized by NAS and RAID  
22 systems as if they are traditional (but unusually poor-performing) CMR drives.

23 4. Meanwhile, customers who purchased and utilized these hard drives for their  
24 advertised and intended purpose—in NAS devices and in RAID arrays—experienced, at best,  
25 terrible performance of between 70% to 1,000% slower write speed and read/write latency  
26 compared to CMR drives, and also increased risk of data loss during RAID rebuilds due to  
27 greatly increased rebuild times. At worst, customers experienced hard drives that froze up and  
28 performed so badly that they were detected by the NAS or RAID array as failed hardware and

1 dropped from the disk array, causing catastrophic data loss. Even adding just one of these  
2 inferior SMR hard drives to an existing storage array (which otherwise contains traditional,  
3 good-performing CMR hard drives) will poison the entire drive array, causing the entire array  
4 to suffer this poor performance and greater risk of data loss.

5 5. WDC was able to get away with this fraud until April 2020 because it  
6 intentionally hid, and even outright lied about, its use of the SMR technology until it was  
7 forced to admit its scheme in response to an exhaustive investigation by a leading storage  
8 technology online publication on April 14, 2020. Until then, WDC did not disclose its use of  
9 the SMR technology anywhere—including on its product datasheets. Based on information and  
10 belief, WDC did not even disclose its use of the SMR technology to its vendor-partners who  
11 manufactured the NAS devices for which the hard drives were purportedly designed. Based on  
12 information and belief, WDC customer support staff were instructed to refuse to acknowledge  
13 to customers that the WD Red NAS drives utilized SMR technology—even when asked—and  
14 would blame “user error” for bad performance and problems. In fact, a senior WDC executive  
15 as recently as March 30, 2020 outright denied that any WD Red NAS hard drives used SMR  
16 technology—before WDC was forced to publicly reverse itself two weeks later.

17 6. Since WDC’s scheme was brought to light two months ago, two of the leading  
18 NAS device manufacturers (specifically, Synology, Inc. and iXsystems) have blacklisted all  
19 WD Red drives with SMR technology<sup>1</sup>, removing them from their hardware compatibility lists.  
20 Those NAS manufacturers now urge their customers not to use the hard drives in their NAS  
21 devices because the drives are in fact not appropriate for the hard drives’ advertised and  
22 intended purpose.

23 7. Remarkably, WDC’s response, even after getting caught red-handed, has been to  
24 claim that using SMR in NAS drives is a good idea and that it has done nothing wrong. In a  
25 blog post WDC put out on April 20, 2020 in response to the snowballing fiasco, WDC even  
26 attempted to blame its own customers for the problems they were experiencing. WDC accused  
27

28 <sup>1</sup> Specifically, WD Red NAS hard drives with the following SKUs: WD20EFAX,  
WD30EFAX, WD40EFAX and WD60EFAX.

1 its customers of overusing the drives “in system workloads far exceeding their intended uses,”  
2 suggesting that affected customers somehow should have known to purchase different NAS  
3 hard drives (i.e., NAS drives with CMR technology) instead, even though WDC had not  
4 previously disclosed what recording technology any of its NAS hard drives had used.

5 8. Meanwhile, to this day, WDC continues to falsely advertise that these SMR-  
6 technology WD Red NAS hard drives are “**Built for NAS compatibility,**” are “**specifically**  
7 **designed for use in NAS systems with up to 8 bays,**” are “**purpose-built for NAS,**” “**Helps**  
8 **ensure your data is protected ... in a NAS or RAID environment,**” and are appropriate for  
9 “**Small and home office NAS systems in a 24x7 environment.**”

10 9. WDC knows these representations and advertisements are false or deceptive.  
11 WDC knows with certainty that these hard drives should never have been labeled and  
12 advertised as “NAS” hard drives. WDC has been told by its own vendor-partners (who have  
13 blacklisted these supposedly “Built for NAS compatibility” hard drives) that these hard drives  
14 are not compatible with their NAS devices and are not fit for the drives’ advertised and  
15 intended purpose. WDC knows that thousands of customers have suffered poor performance  
16 and/or data loss, and that thousands of customers are now—justifiably—worried that the hard  
17 drives are essentially ticking time bombs that risk the destruction of customer data and files at  
18 any moment due to increased likelihood of failure, especially during the RAID rebuilding  
19 process.

20 10. But WDC refuses to make things right. WDC would rather continue defrauding  
21 its customers and continue leveraging—and ultimately squandering—its past best-in-class  
22 reputation to increase its short-term profits.

23 11. As a result of WDC’s fraud and deception, thousands of customers nationwide,  
24 including the 6 Plaintiffs, who purchased these WD Red NAS hard drives for their advertised  
25 and intended use, have been duped and have suffered harm and damages. Ultimately, the hard  
26 drives are completely worthless for their intended purpose—and are in fact dangerous to  
27 customer data.



1 19. Plaintiff Steven Gravel is a citizen and resident of Delmar, New York.

2 20. Plaintiff Tod Weitzel is a citizen and resident of Sunnyvale, California.

3 21. Defendant Western Digital Corporation is a Delaware corporation with its  
4 principal place of business and/or nerve center located at 5601 Great Oaks Parkway, San Jose,  
5 California 95119.

6 **JURISDICTION AND VENUE**

7 22. **Subject Matter Jurisdiction.** The Court has subject matter jurisdiction over  
8 this civil action pursuant to 28 U.S.C. § 1332(d)(2)—*i.e.*, Class Action Fairness Act jurisdiction  
9 —because the amount in controversy exceeds the sum or value of \$5 million (exclusive of  
10 interest and costs) and is a class action in which any member of a class of plaintiffs is a citizen  
11 of a state different from any defendant.

12 23. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendant  
13 because: (1) Defendant WDC is headquartered in San Jose, California (which is within the  
14 Northern District of California) and is authorized to do business and regularly conducts  
15 business in the State of California such that the maintenance of this lawsuit does not offend  
16 traditional notions of fair play and substantial justice; and/or (2) Defendant has committed  
17 tortious acts within the State of California (as alleged, without limitation, throughout this  
18 Complaint).

19 24. **Venue.** Venue is proper in the Northern District of California because, pursuant  
20 to 28 U.S.C. § 1391(b)(1), this judicial district is a judicial district in which Defendant WDC  
21 resides, and pursuant to 28 U.S.C. § 1391(c)(2), for venue purposes WDC shall be deemed to  
22 reside in this judicial district because WDC is subject to the court’s personal jurisdiction with  
23 respect to this civil action.

24 **COMMON FACTUAL ALLEGATIONS**

25 25. Western Digital (“WDC”) is one of the largest manufacturers of hard drives in  
26 the world. Western Digital manufactures two different types of hard drives: traditional large-  
27 capacity spinning disk mechanical hard drives, and more modern but smaller-capacity solid-  
28 state flash storage drives (often also called hard drives) which have no moving parts. This

1 lawsuit concerns the traditional large capacity spinning disk mechanical hard drives, and any  
2 reference to “hard drives” herein means traditional spinning disk mechanical hard drives.

3 26. Hard drives are utilized to store digital data and files for a home or business  
4 computer system. Several hundred million hard drives (spinning disk mechanical hard drives)  
5 are sold each year to consumers and businesses worldwide. Hard drives utilize spinning  
6 magnetic disk technology to hold information inscribed in very tiny tracks, somewhat similar to  
7 how a vinyl record holds information read by record players. These hard drives have moving  
8 parts, including a mechanical head which reads and writes data to one or more disk platters,  
9 which are contained inside a single sealed unit.

10 27. In 2012, WDC released its WD Red series NAS hard drives, which were  
11 specifically designed for NAS (Network-Attached Storage) systems and for RAID (Redundant  
12 Array of Independent Disks) environments. A NAS device is a stand-alone computing device  
13 which typically contains multiple individual hard drives that are grouped together to form one  
14 large datastore, which is used to store files and share them with other computers or laptops over  
15 a network. RAID is a technology, typically utilized in NAS devices, of combining multiple  
16 hard drives into a single logical datastore or virtual drive for data redundancy, data security,  
17 and performance purposes. NAS devices which contain two or more hard disks typically (and  
18 often automatically) format the drives in a RAID format via software or hardware, which builds  
19 in redundancy such that one or multiple drives can fail and data will not be lost. NAS devices  
20 and storage servers most commonly utilize either a Linux-based ext4 or btrfs storage file  
21 system with hardware- or software-based RAID, or a ZFS file system with software-based  
22 RAID.<sup>2</sup> NAS devices have become increasingly popular for both home and small business use,  
23 as the use of digital data has exploded over the years including digital files, photographs,  
24 videos, and databases which have required ever-increasing storage capacity which NAS devices

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26 \_\_\_\_\_  
27 <sup>2</sup> ZFS is a proprietary file system and logical disk volume manager owned by Oracle with  
28 robust redundancy and error-correction features. The term “ZFS” is also often used to mean  
OpenZFS, which is a popular open-source version of ZFS. ZFS is most commonly used in  
FreeNAS-based NAS devices and storage servers. FreeNAS is an open-source NAS operating  
system based on Linux and the OpenZFS file system.

1 (with their grouping of large hard drives) are able to provide along with data redundancy.

2 28. Hard drives which are designed and built for NAS and RAID must have certain  
3 characteristics. In particular, such hard drives must be able to handle continuous and sustained  
4 writes and heavy random writes, which occur often during the RAID rebuilding process (also  
5 called “resilvering”) when a failed hard drive in a RAID array is replaced with a new drive and  
6 the data is redistributed across the replacement drive and the other drives. Continuous and  
7 heavy writes also occur when the storage capacity of a RAID array is expanded by adding hard  
8 drives, which requires a similar resilvering process where the data is redistributed and spread  
9 across all the drives.

10 29. Continuous and sustained writes and heavy random writes also occur during  
11 RAID “scrubbing,” which is a standard and recommended periodic data integrity check where  
12 all the data on the hard drive is checked for errors and consistency and automatically corrected.  
13 NAS manufacturers generally recommend (and often set their devices to automatically  
14 perform) RAID scrubbing at least once a month to maintain system health and to prevent data  
15 loss.

16 30. Hard drives designed and built for NAS and RAID also are expected to have  
17 reliable and fast random-write performance in general, and to be able to handle continuous  
18 random writes. NAS units and RAID arrays are often utilized to house databases and database  
19 files, iSCSI datastores, software-based virtual machines, large numbers of small files written  
20 and read from multiple computers on a network, and backup files, all of which often require  
21 heavy random writes to the hard drives.

22 31. For nearly a decade, WD Red NAS hard drives have enjoyed a strong reputation  
23 as best-in-class for use in NAS devices and RAID storage arrays.

24 32. WDC today continues to advertise its WD Red NAS hard drives as “**Built for**  
25 **NAS compatibility**” and “**Designed for RAID environments.**” WDC advertises WD Red  
26 NAS hard drives as “**specifically designed for use in NAS systems with up to 8 bays**” and  
27 appropriate for “**small and home office NAS systems in a 24x7 environment.**”

28 33. And until 2018, WDC’s advertising rang true, and all of its WD Red NAS hard



1 drives, which all utilized industry-standard CMR (Conventional Magnetic Recording)  
2 technology, did indeed rightfully earn a reputation for reliability and being “purpose-built” and  
3 well-suited for NAS and RAID environments.

4 34. However, in 2018, WDC secretly swapped out the industry-standard CMR  
5 technology in its 2TB, 3TB, 4TB and 6TB capacity WD Red NAS hard drives, and replaced it  
6 with inappropriate—and cheaper—hard drive technology called SMR (Shingled Magnetic  
7 Recording).

8 35. WDC switched the recording technology in these drives to SMR for one reason:  
9 to reduce its costs and increase its profits. SMR technology enables WDC to fit 25% more data  
10 onto the same-size disk platters, thus significantly reducing its costs to produce the drives.  
11 Meanwhile, WDC kept the switch to this inappropriate SMR technology a secret so that it  
12 could continue to charge the same price WDC previously charged for its previous generation  
13 CMR drives, thereby increasing its profits. WDC intentionally did not disclose its use of SMR  
14 technology in the new drives anywhere whatsoever. WDC did not mention the SMR  
15 technology in its advertising, in its hard drive documentation, in the hard drive product  
16 datasheets, or in the labeling on the hard drive itself.

17 36. Unfortunately, this SMR technology is wholly inappropriate for use in NAS and  
18 RAID systems—which is the very use that WDC advertises and promotes these WD Red NAS  
19 hard drives for. Notably, WDC is the only hard drive manufacturer in the world who has ever  
20 used SMR technology in NAS-labeled hard drives; all other manufacturers have solely used  
21 CMR technology. In fact, WDC’s largest competitor, Seagate Technology, has publicly stated  
22 that SMR is incompatible with NAS and RAID.

23 37. SMR technology was created, and had previously been utilized, for the limited  
24 purpose of creating maximum-capacity archival hard drives. Historically, SMR hard drives had  
25 been explicitly promoted for, and utilized as, a cost-effective archiving solution and for cold  
26 storage. (Cold storage means long-term storage, where after the drive is filled it is unplugged  
27 and stored for safekeeping.) SMR drives had been limited to archival purposes, where the very  
28 poor write performance of Shingled Magnetic Recording technology would not be a significant

1 limitation because archive drives do not require fast or reliable continuous writes.

2 38. SMR technology provides for the tracks on a hard disk platter to be layered on  
3 top of each other, like roof shingles on a house, to increase platter and storage density. Hard  
4 drives that use SMR technology are significantly slower in writing data than CMR hard drives  
5 because when an SMR drive writes to an area, the entire region (i.e., below and above the  
6 shingle) will need to be read, copied, and re-written, in contrast to a standard CMR drive where  
7 the data can be written quickly and discretely anywhere on the drive.

8 39. WDC designed these small-capacity SMR drives in a way to hide the existence  
9 of the SMR technology, through drive-managed tricks which cause the drives to be recognized  
10 by NAS and RAID systems as if they are traditional—but unusually poor performing—CMR  
11 drives. WDC utilized the trick of a small CMR disk cache zone to function as a temporary  
12 storage space. Data writes are first temporarily stored on this staging disk area (the small CMR  
13 cache zone). Then, when the disk is idle (i.e., when there is no writing being made to it), the  
14 hard drive rearranges the data in the background, moving the data that was temporarily saved in  
15 the CMR cache over to the main SMR part of the drive. This data rearranging and clean-up  
16 process is often referred to as the “garbage collection” process.

17 40. However, after continuous heavy writes, the CMR cache layer becomes full, and  
18 the drive slows down dramatically—it essentially “chokes” and stops the flow of data while it  
19 flushes out the CMR cache and tries to catch up writing to the much slower main SMR hard  
20 disk. This is especially problematic and dangerous when the hard drive has been set up in a  
21 NAS as part of a RAID array. In that case, the choking hard drive can report “timeouts” or loss  
22 of connectivity to the NAS, which logically assumes the hard disk has failed and then kicks the  
23 drive out of the RAID array, which can cause catastrophic data loss.

24 41. According to recent testing by technology websites *Serve The Home* and *Ars*  
25 *Technica*, WD Red NAS SMR-technology drives at best offer lousy performance compared to  
26 CMR-technology drives, and at worst the drives fall flat on their face so badly that data loss  
27  
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1 may result.<sup>3</sup> The SMR versions of the WD Red NAS drives offer between 70% to 1,000%  
2 slower write speed and read/write latency compared to CMR drives (including the prior CMR  
3 versions of the same capacity WD Red NAS drives).

4 42. Using an SMR WD Red NAS drive also results in increased risk of data loss  
5 during RAID rebuilds due to greatly increased rebuild times. For example, *Serve The Home*  
6 found RAID resilvering times with an SMR WD Red NAS drive could take nearly 16 times  
7 longer than with a CMR drive. In Will Taillac’s testing for *Serve The Home*, all three of the  
8 tested traditional 4TB CMR drives took less than 17 hours to complete the resilvering process  
9 (in fact, the prior generation CMR version of the 4TB WD Red NAS was the quickest of the  
10 CMR drives at 14.6 hours), versus the “new” SMR version of the 4TB WD Red NAS which  
11 took 229.7 hours (over 9 days) to complete the resilvering process—i.e., nearly 16x longer!  
12 This massively increased resilvering time is particularly dangerous and unacceptable in a RAID  
13 array because a resilvering process is typically performed to replace a failed hard drive; and  
14 often if just one more hard drive fails, catastrophic data loss can result. The resilvering process  
15 is extremely stressful on hard drives because all the data is being redistributed among the drives  
16 in the array. Because SMR drives can increase the required resilvering time by an order of  
17 magnitude (from hours to days) as compared to CMR drives, the likelihood of another drive  
18 failing during that extended resilvering process—and thus the likelihood of catastrophic data  
19 loss—likewise increases substantially.

20 43. Even the read performance of SMR WD Red NAS drives can be poor and  
21 unacceptable, where the increased latency due to the SMR technology causes freezes and stops  
22 and starts in opening and viewing files and data. As Jim Salter explained based on his testing of  
23 the drive for *Ars Technica*, “for a desktop user, someone who wants things to *happen* when  
24 they click buttons and drag things around, the Red can occasionally provide a truly frustrating  
25

26 \_\_\_\_\_  
27 <sup>3</sup> See *Serve The Home* article by Will Taillac, dated May 28, 2020, at  
28 <https://www.servethehome.com/wd-red-smr-vs-cmr-tested-avoid-red-smr/>; see *Ars Technica*  
article by Jim Salter, dated June 5, 2020, at <https://arstechnica.com/gadgets/2020/06/western-digital-smr-disks-arent-great-but-theyre-not-garbage/>.

1 experience during what should be a very, very easy workload, even for a conventional drive.”  
2 (Emphasis in original.)<sup>4</sup>

3 44. Remarkably, and unfortunately, even adding just one of these inferior SMR WD  
4 Red NAS hard drives to an existing storage array (which otherwise contains traditional, good-  
5 performing CMR hard drives) can poison the entire drive array, causing the entire array to  
6 suffer this poor performance and greater risk of data loss. RAID arrays are often only as good  
7 as their weakest link.

8 45. When WDC downgraded the technology in its WD Red NAS hard drives to  
9 SMR technology, it did so secretly, without telling a soul. Based on information and belief,  
10 WDC did not inform the NAS manufacturers, who had tested and certified the previous  
11 generation CMR versions of the hard drives, that WDC had replaced the guts of these  
12 identically-labeled drives with cheaper and poor-performing SMR technology. Based on  
13 information and belief, WDC likewise did not inform its resellers, such as Amazon.com and  
14 Newegg.com, that it had replaced the guts of many of its WD Red NAS hard drive models with  
15 inferior and cheaper SMR technology.

16 46. Critically, when WDC downgraded its hard drives to SMR technology, WDC  
17 did not change any of its advertising or representations regarding the hard drives being  
18 “purpose-built” and suitable for NAS and RAID. WDC did not make any disclosure  
19 whatsoever of its use of SMR technology in the hard drives. WDC advertising and  
20 specifications, which were also utilized by WDC’s resellers in their ads and product web pages  
21 for the hard drives, continued to make the exact same representations and statements that the  
22 WD Red NAS hard drives were specifically intended and appropriate for NAS and RAID.

23 47. Starting around March 2019, various purchasers of WD Red NAS hard drives  
24 began reporting on online message boards that they were experiencing poor write performance  
25 and consistent failures during RAID resilvering.

26  
27 <sup>4</sup> See responsive comments by author to *Ars Technica* article by Jim Salter, dated June 5, 2020,  
28 at <https://arstechnica.com/gadgets/2020/06/western-digitals-smr-disks-arent-great-but-theyre-not-garbage/>.

1 48. For example, one user stated: “[W]hen I was moving data from one drive to  
2 another, several terabytes worth, it literally took most of a week. The drive would fill 30GB,  
3 then stop and basically lock up the OS.”<sup>5</sup>

4 49. Another user stated: “[T]he latest iteration of WD REDS [are] unable to be used  
5 for rebuilding RAID[56] or RAIDZ sets: They rebuild for a while (1-2 hours), then throw errors  
6 and get kicked out of the set.”<sup>6</sup>

7 50. Another user posted on a Synology (a leading NAS manufacturer) user forum  
8 that he was unable to add a new WD Red NAS 6TB drive to a RAID setup containing three  
9 older WD Red NAS 6TB drives. When the user added the new WD Red NAS drive, the  
10 resilvering process took over three days and then failed.<sup>7</sup>

11 51. Many purchasers reported being unable to use the hard drives in their NAS  
12 systems, and that the hard drives kept getting kicked out of their RAID arrays. One user stated:  
13 “Attempting to replace drives in my existing array resulted in new WD-RED WD40EFAX  
14 drives (multiple units) throwing HARD errors (IDNF - Sector ID not found) and being kicked  
15 out of the array. That’s apart from them pausing for 30-180 seconds at a time occasionally  
16 whilst they rebuild their internals, or the painfully slow random-write speeds when you throw  
17 more than about 2GB at a time at them.”<sup>8</sup>

18 52. Another user posted: “I got recently bit by WD40EFAX ... When I tried to  
19 replace one of the failed WD Red disk in my vdev I started getting bunch of errors... I replaced  
20 that with WD purple and haven’t had any problems so far.”<sup>9</sup>

21 53. Some hard drive technology enthusiasts noticed that the reported problems  
22 appeared to affect WD Red NAS drives 6TB or below in size, with a SKU containing the letters

23 \_\_\_\_\_  
24 <sup>5</sup> See <https://arstechnica.com/gadgets/2020/04/caveat-emptor-smr-disks-are-being-submerged-into-unexpected-channels/>.

25 <sup>6</sup> See <https://blocksandfiles.com/2020/04/14/wd-red-nas-drives-shingled-magnetic-recording/>.

26 <sup>7</sup> See <https://community.synology.com/enu/forum/1/post/127228>.

27 <sup>8</sup> See [https://np.reddit.com/r/DataHoarder/comments/fyhzl9/disguised\\_smr\\_drives\\_the\\_official\\_western\\_digital/](https://np.reddit.com/r/DataHoarder/comments/fyhzl9/disguised_smr_drives_the_official_western_digital/).

28 <sup>9</sup> *Ibid.*

1 “EFAX.”

2 54. Several of these technology enthusiasts noted that, remarkably, the official  
3 WDC spec sheet for these \*EFAX hard drives indicated the EFAX drives should have *better*  
4 performance than the prior version of the drives (which contained the letters “EFRX”). The  
5 EFAX drives were listed with a faster “interface transfer rate” (180 MB/s versus as low as 150  
6 MB/s), and with four times as much DRAM cache (256MB versus 64MB). The WDC product  
7 data sheet gave zero indication whatsoever that the EFAX drives contained SMR technology  
8 (as compared to the prior EFRX versions of the “same” drives which contained the standard  
9 CMR technology).

10 55. Nonetheless, some of the technology enthusiasts who were experiencing these  
11 problems surmised that the drives may in fact be SMR drives under the covers, because the  
12 drives’ poor write performance, RAID and NAS incompatibility, and their data-choking  
13 behavior were consistent with the known limitations of SMR technology.

14 56. WDC’s response to these allegations was to lie and deny that the hard drives  
15 contained SMR technology. For example, on March 30, 2020, Yemi Elegunde, an enterprise  
16 and channel senior sales manager for Western Digital’s UK operations, denied that the WD  
17 Red NAS drives used SMR technology, stating: “The only SMR drive that Western Digital will  
18 have in production is our 20TB hard enterprise hard drives and even these will not be rolled out  
19 into the channel. All of our current range of hard drives are based on CMR Conventional  
20 Magnetic Recording.”<sup>10</sup>

21 57. Based on information and belief, WDC customer support staff were instructed to  
22 refuse to acknowledge that the new WD Red NAS hard drives now utilized SMR technology.  
23 One purchaser reported WDC’s response when he contacted WDC customer support to ask if  
24 the drive utilized SMR versus CMR technology: “Western Digital support has gotten back to  
25 me. They have advised me that they are not providing that information so they are unable to tell  
26 me if the drive is SMR or PMR [PMR is another term used for CMR]. LOL. He said that my  
27

28 <sup>10</sup> See <https://zfsonlinux.topicbox.com/groups/zfs-discuss/T4b48af94f1bc50a7>.

1 question would have to be escalated to a higher team to see if they can obtain that info for me.”  
2 Then, “the higher team contacted me back and informed me that the information I requested  
3 about whether or not the WD60EFAX was a SMR or PMR would not be provided to me. They  
4 said that information is not disclosed to consumers. LOL. WOW.”<sup>11</sup> (Emphasis added.)

5 58. Based on information and belief, when consumers contacted WDC to complain  
6 about the poor performance of its (SMR-technology) WD Red NAS hard drives in NAS and  
7 RAID environments, WDC as a matter of policy continued to insist that the hard drives were  
8 suitable for those environments, failed to disclose that the drives utilized (inappropriate) SMR  
9 technology, and blamed “user error” or the user’s other equipment for the poor performance.

10 59. In April 2020, Chris Mellor, a journalist at a leading storage technology website,  
11 *Blocks & Files*, began investigating this possible undisclosed use of SMR technology in WD  
12 Red NAS hard drives after an information technology expert brought his suspicions to Mellor’s  
13 attention. As stated in the *Blocks & Files* article published April 14, 2020: “Alan Brown, a  
14 network manager at UCL Mullard Space Science laboratory, the UK’s largest university-based  
15 space research group, told us about his problems adding a new WD Red NAS drive to a RAID  
16 array at his home. Although it was sold as a RAID drive, the device ‘keep[s] getting kicked out  
17 of RAID arrays due to errors during resilvering,’ he said.”<sup>12</sup> Mr. Brown suspected the drive was  
18 an SMR drive under the covers, and his testing seemed to confirm his hypothesis. Mr. Brown  
19 told the website that the WD Red NAS drive’s poor performance had “been a hot-button issue  
20 in the datahoarder Reddit for over a year. People are getting pretty peeved by it because SMR  
21 drives have ROTTEN performance for random write usage.” *Ibid.*

22 60. Until then, WDC had never publicly admitted that any WD Red NAS drives  
23 utilized SMR technology. But, when *Blocks & Files* contacted WDC and asked WDC point-  
24 blank whether WD Red NAS drives used SMR technology, WDC realized the jig was up.  
25 WDC had been caught. WDC was finally forced to acknowledge the truth.

26 61. WDC stated on the record to *Blocks & Files* (in the article published April 14,

27 <sup>11</sup> See <https://community.synology.com/enu/forum/1/post/127228>.

28 <sup>12</sup> See <https://blocksandfiles.com/2020/04/14/wd-red-nas-drives-shingled-magnetic-recording/>.

1 2020):

2 Currently, Western Digital’s WD Red 2TB-6TB drives are device-managed SMR  
 3 (DMSMR)... You are correct that we do not specify recording technology in our  
 4 WD Red HDD documentation. We strive to make the experience for our NAS  
 5 customers seamless, and recording technology typically does not impact small  
 6 business/home NAS-based use cases. In device-managed SMR HDDs, the drive  
 7 does its internal data management during idle times. In a typical small  
 8 business/home NAS environment, workloads tend to be bursty in nature, leaving  
 9 sufficient idle time for garbage collection and other maintenance operations.<sup>13</sup>

10 62. Once WDC finally admitted what it had done, WDC was universally condemned  
 11 by the technology press. Storage experts were in utter disbelief that WDC would do something  
 12 so utterly reckless and inappropriate as sneak SMR technology into hard drives that WDC  
 13 advertised and represented to be designed for NAS and RAID.<sup>14</sup> As Alan Brown stated in a  
 14 separate interview article with *Block & Files*, these SMR-technology WD Red NAS hard drives  
 15 were “unfit for the purpose for which they are marketed.”<sup>15</sup>

16 63. As the scandal unfolded, Seagate Technology (WDC’s largest competitor)  
 17 publicly stated that SMR is incompatible with NAS and RAID, and that its NAS-specific hard  
 18 drives did not use SMR: “Seagate only produces NAS drives that are CMR. We do not have  
 19 any SMR drives in our IronWolf and IronWolf Pro drives, which are NAS solutions...[W]e  
 20 **don’t recommend SMR for NAS...** Seagate will always recommend the correct drive  
 21 technology for the right application.”<sup>16</sup> (Emphasis added.)

22 64. On April 20, 2020, six days after the *Blocks & Files* article was published, as the  
 23 fiasco and condemnation continued to snowball, WDC posted a public statement about the  
 24

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25 <sup>13</sup> *Ibid.*

26 <sup>14</sup> *E.g.*, see *Extreme Tech* article dated April 24, 2020, at  
 27 [https://www.extremetech.com/computing/309730-western-digital-comes-clean-shares-which-  
 28 hard-drives-use-smr](https://www.extremetech.com/computing/309730-western-digital-comes-clean-shares-which-hard-drives-use-smr); *Ars Technica* article dated April 17, 2020, at  
[https://arstechnica.com/gadgets/2020/04/caveat-emptor-smr-disks-are-being-submerged-into-  
 unexpected-channels/](https://arstechnica.com/gadgets/2020/04/caveat-emptor-smr-disks-are-being-submerged-into-unexpected-channels/); *Serve The Home* article dated May 28, 2020, at  
<https://www.servethehome.com/wd-red-smr-vs-cmr-tested-avoid-red-smr/>.

<sup>15</sup> See [https://blocksandfiles.com/2020/04/15/shingled-drives-have-non-shingled-zones-for-  
 caching-writes/](https://blocksandfiles.com/2020/04/15/shingled-drives-have-non-shingled-zones-for-caching-writes/).

<sup>16</sup> See [https://arstechnica.com/information-technology/2020/04/seagate-says-network-attached-  
 storage-and-smr-dont-mix/](https://arstechnica.com/information-technology/2020/04/seagate-says-network-attached-storage-and-smr-dont-mix/).



1 matter on a blog post on its website.<sup>17</sup> In the post, WDC acknowledged that “some” of its WD  
2 Red NAS hard drives utilized SMR technology—but WDC still did not identify which  
3 particular WD Red NAS hard drive SKUs used SMR. Meanwhile, as WDC previously  
4 admitted in its statement to *Blocks & Files*, WDC had never previously disclosed that it had  
5 sneaked SMR technology into its hard drives, or which particular drives had it: “You are  
6 correct that we do not specify recording technology in our WD Red HDD documentation.”<sup>18</sup>

7 65. Since WDC’s scheme was brought to light, two of the leading NAS device  
8 manufacturers have blacklisted all WD Red NAS drives with SMR technology<sup>19</sup>, removing  
9 them from their hardware compatibility lists, because they have deemed them unfit and  
10 inappropriate for use in their NAS devices. Notably, this blacklisting of WD Red NAS drives  
11 by major NAS manufacturers directly contradicts WDC’s April 20, 2020 statement on its  
12 public blog that all of the WD Red NAS drives, including those with SMR technology, have  
13 been “rigorously tested” “and have been validated by the major NAS providers.”<sup>20</sup>

14 66. Synology, Inc. is one of the world’s leading manufacturers of NAS devices and  
15 storage servers for consumers and businesses. Synology NAS units are consistently among the  
16 most popular consumer NAS devices offered on Amazon.com. Based on information and  
17 belief, which will be confirmed by third-party discovery of Synology, Inc., WDC failed to  
18 notify Synology that it had secretly swapped the guts of many of its WD Red NAS drives with  
19 SMR technology. Since the news broke publicly of WDC’s swapping out CMR for the inferior  
20 SMR technology, Synology has removed those WD Red NAS drives from the hardware  
21 compatibility lists for its NAS units.<sup>21</sup> Based on the investigation of Plaintiffs’ counsel,  
22 Synology customer support staff now tells Synology customers, when asked, that they should  
23

24 <sup>17</sup> See <https://blog.westerndigital.com/wd-red-nas-drives/>.

25 <sup>18</sup> See <https://blocksandfiles.com/2020/04/14/wd-red-nas-drives-shingled-magnetic-recording/>.

26 <sup>19</sup> Specifically, WD Red NAS hard drives with the following SKUs: WD20EFAX,  
WD30EFAX, WD40EFAX, and WD60EFAX.

27 <sup>20</sup> See <https://blog.westerndigital.com/wd-red-nas-drives/>.

28 <sup>21</sup> See [https://www.synology.com/en-us/compatibility?search\\_by=category&category=hdds\\_no\\_ssd\\_trim&p=1](https://www.synology.com/en-us/compatibility?search_by=category&category=hdds_no_ssd_trim&p=1).

1 not use these SMR-technology WD Red NAS drives (i.e., WDC's newest WD Red NAS drives  
2 with 2TB-6TB capacities with SKUs WD20EFAX, WD30EFAX, WD40EFAX, and  
3 WD60EFAX) in Synology products and that those drives are not supported.<sup>22</sup>

4 67. Another leading manufacturer of NAS devices, iXsystems, now recommends  
5 that its customers not use WD Red NAS drives with SMR technology. iXsystems stopped  
6 offering its NAS and storage server solutions with WD Red NAS SMR-technology drives pre-  
7 installed; previously, since 2019, iXsystems had shipped systems containing these SMR drives.  
8 Based on the investigation of Plaintiff's counsel, iXsystems long had a policy of recommending  
9 against the use of SMR drives. Based on information and belief, which will be confirmed by  
10 third-party discovery of iXsystems, WDC failed to notify iXsystems that it had secretly  
11 swapped the guts of many of its WD Red NAS drives with SMR technology. Based on  
12 information and belief, iXsystems was caught flat-footed when the WDC SMR scandal broke,  
13 not having previously realized it was selling hardware with SMR hard drives, and as a result  
14 iXsystems has received complaints from many upset and damaged customers.

15 68. iXsystems is also the creator of the open source FreeNAS storage software  
16 which is utilized not only in its own NAS and storage systems, but also in NAS units and  
17 servers designed by many other manufacturers. Additionally, thousands of individual users  
18 install FreeNAS software in their own custom-built storage servers and NAS units.  
19 Unfortunately, NAS and storage servers utilizing FreeNAS (which utilizes the ZFS file system)  
20 have proven particularly incompatible with SMR-technology WD Red NAS hard drives. The  
21 ZFS filesystem was designed to use small blocksize random writes in virtually all usage  
22 scenarios, including disk array resilvering. As previously discussed, SMR technology is wholly  
23 incompatible with these constant random writes because they cause the CMR cache area to  
24 rapidly and constantly fill up. This causes the drive to choke and stop the flow of data while it

25 \_\_\_\_\_  
26 <sup>22</sup> Meanwhile, and likely confusing to consumers, Synology continues to recommend the older  
27 WD Red NAS drives with 2TB-6TB capacities (SKUs WD20EFRX, WD30EFRX,  
28 WD40EFRX, and WD60EFRX) because they utilize traditional CMR technology. Also likely  
confusing to consumers, Synology continues to recommend other *new* WD Red NAS drives  
with 10TB-12TB capacities with SKUs of \*EFAX because unlike the smaller capacity 2TB-  
6TB \*EFAX drives, these 10TB-12TB \*EFAX drives continue to utilize CMR technology.

1 flushes out the CMR cache and tries to write the data to the much slower main SMR hard disk.  
2 In addition to this terrible performance and increased risk of data loss, iXsystems has also  
3 confirmed reports (and has notified WDC) of an additional problem that under heavy write  
4 loads and/or resilvering the WD Red NAS drives can return Sector ID Not Found (IDNF)  
5 errors, making the drives unusable and causing data to be destroyed.<sup>23</sup> Unsurprisingly, as a  
6 result, iXsystems recommends that FreeNAS and ZFS users not install SMR WD Red NAS  
7 drives in FreeNAS systems.

8 69. Incredibly, WDC's response, even after having been caught red-handed, has  
9 been to double-down on its deception. In the blog post WDC put out on April 20, 2020 in  
10 response to the snowballing fiasco, WDC continued to claim that using SMR in NAS drives  
11 was appropriate because "The data intensity of typical small business/home NAS workloads is  
12 intermittent, leaving sufficient idle time for DMSMR drives to perform background data  
13 management tasks as needed and continue an optimal performance experience for users."<sup>24</sup>  
14 (Emphasis added.) This was similar to WDC's prior inaccurate statement to *Blocks & Files* that  
15 "recording technology typically does not impact small business/home NAS-based use cases. In  
16 device-managed SMR HDDs, the drive does its internal data management during idle times. In  
17 a typical small business/home NAS environment, workloads tend to be bursty in nature, leaving  
18 sufficient idle time for garbage collection and other maintenance operations."<sup>25</sup>

19 70. In the same April 20, 2020 blog post, WDC attempted to blame its own  
20 customers for the problems they were experiencing. WDC accused its customers of overusing  
21 the drives "in system workloads far exceeding their intended uses." WDC suggested that  
22 affected customers somehow should have known to purchase different NAS hard drives (i.e.,  
23 NAS drives with CMR technology) to perform *what were in fact typical NAS workloads*, even  
24 though WDC had not previously disclosed what recording technology any of its NAS hard  
25 drives had used. In truth, the earlier CMR versions of the same-capacity "WD Red NAS"

26 \_\_\_\_\_  
27 <sup>23</sup> See <https://www.ixsystems.com/blog/library/wd-red-smr-drive-compatibility-with-zfs/>.

28 <sup>24</sup> See <https://blog.westerndigital.com/wd-red-nas-drives/>.

<sup>25</sup> See <https://blocksandfiles.com/2020/04/14/wd-red-nas-drives-shingled-magnetic-recording/>.

1 drives (i.e., the prior \*EFRX CMR versions of the drives, as opposed to the newer \*EFAX  
2 SMR versions of the drives) could easily perform such “workloads,” as could all competing  
3 NAS drives from other manufacturers (all of which utilized CMR technology).

4 71. These statements are an attempt by WDC to create a false narrative to save face  
5 and redirect blame. WDC in fact knows full well that these SMR WD Red NAS hard drives  
6 should never have been labeled and advertised as “NAS” hard drives. WDC has been told by its  
7 own vendor-partners that these hard drives are not compatible with their NAS devices and that  
8 the hard drives are not fit for the drives’ advertised and intended purpose. WDC knows that  
9 thousands of customers have suffered poor performance and data loss and/or are now—  
10 justifiably—worried that the hard drives are essentially ticking time bombs that risk the  
11 destruction of customer data and files at any moment due to increased likelihood of failure  
12 during the RAID rebuilding process.

13 72. In fact, WDC’s acknowledgment on its public blog and to *Blocks & Files* that  
14 SMR-technology WD Red NAS hard drives are appropriate only for “intermittent” occasional  
15 “bursty” writes, is essentially an admission that these hard drives are not suitable for their  
16 advertised and intended use in NAS and RAID systems. WDC admitted that the drives require  
17 “sufficient idle time for garbage collection and other maintenance operations” (unlike CMR  
18 drives)—which is incompatible with usage in NAS and RAID systems.<sup>26</sup> WDC had even  
19 previously released a YouTube video explaining and admitting that SMR-technology hard  
20 drives are not appropriate for random-write workloads—which is a typical and common use of  
21 NAS systems.<sup>27</sup>

22 73. Meanwhile, WDC continues to falsely advertise and promise that these WD Red  
23 NAS drives are designed and appropriate for RAID and NAS. WDC continues to keep “NAS”  
24 in the name of these SMR drives, and continues to promise and advertise (and to provide  
25 marketing materials to its resellers that promise and advertise) that the SMR drives are:  
26 **“purpose-built for NAS,” “Built for NAS compatibility,” “Designed for RAID**

27 <sup>26</sup> See <https://blocksandfiles.com/2020/04/14/wd-red-nas-drives-shingled-magnetic-recording/>.

28 <sup>27</sup> See [https://www.youtube.com/watch?v=\\_VzM3T9J1x4&feature=youtu.be](https://www.youtube.com/watch?v=_VzM3T9J1x4&feature=youtu.be).

1 **environments,” “specifically designed for use in NAS systems with up to 8 bays,”** and are  
2 appropriate for **“Small and home office NAS systems in a 24x7 environment.”** WDC  
3 continues to state: **“Desktop drives aren’t purpose-built for NAS. But WD Red drives with**  
4 **NASware technology are. Our exclusive technology takes the guesswork out of selecting a**  
5 **drive... In a Network Attached Storage device, a desktop hard drive is not typically**  
6 **designed for NAS environments. Do right by your NAS and choose the drive designed for**  
7 **NAS with an array of features to help preserve your data ...”**

8 74. These representations are false or misleading. These SMR-technology hard  
9 drives are not only inappropriate and perform poorly for their advertised and intended use in  
10 NAS and RAID applications—these hard drives are actually outright dangerous when used in  
11 those applications, putting customer data at increased risk.

12 75. Any and all recent purported disclosures which WDC has made regarding the  
13 WD Red NAS hard drives since WDC first publicly admitted on April 14, 2020 that it had  
14 sneaked SMR technology into the drives, have been insufficient and inadequate. Based on the  
15 investigation of Plaintiffs’ counsel, the only additional disclosures or changes in its marketing  
16 that WDC has made since April 14, 2020 are to update its technical product datasheet for the  
17 hard drives to add a single line specifying either “CMR” or “SMR” recording technology for  
18 each listed hard drive SKU, without explaining or disclosing what that means or its  
19 significance. (Product datasheets are a form of advertising, as are all of the statements by  
20 Defendant quoted in this First Amended Complaint.)

21 76. The disclosure of the utilization of SMR versus CMR technology continues to  
22 not appear anywhere in the advertising, online brochures and specifications which customers  
23 actually see on the product webpages of WDC resellers such as Amazon.com and  
24 Newegg.com. But even if prospective customers somehow did come across the words “SMR”  
25 or “CMR,” they would have no idea of their significance or what those letters meant. A  
26 reasonable consumer (the WD Red NAS drives are marketed to consumers and small  
27 businesses) would not see these strange abbreviations and understand that they completely  
28 nullify all the advertising and representations WDC is making about the drives being “purpose-

1 built” for NAS and RAID.

2 77. The bottom line is that in order to cut costs and increase its profits, WDC made  
3 the decision to sneak inferior and inappropriate SMR technology into its previously best-in-  
4 class drives, putting customer data at risk. WDC was finally caught and forced to admit the  
5 truth. But WDC has refused to rectify its wrongs or to change course. WDC has stubbornly and  
6 recklessly decided to continue defrauding its customers and to continue leveraging—and  
7 squandering—its past best-in-class reputation to increase its short-term profits.

8 78. As a result of WDC’s fraud and deception, thousands of customers nationwide,  
9 including the 6 Plaintiffs, who purchased these WD Red NAS hard drives for their advertised  
10 and intended use, have been duped and have suffered harm and damages. Ultimately, the hard  
11 drives are completely worthless for their intended purpose—and are in fact dangerous to  
12 customer data.

13 79. The experiences of Plaintiffs Nicholas Malone, Chris Ayers, James Backus,  
14 David Eaton, Steven Gravel, and Tod Weitzel are typical of the thousands of other class  
15 members throughout the United States who have been similarly deceived by WDC. Each  
16 Plaintiff’s experience is documented in the “Plaintiffs’ Factual Allegations” section below.

17 80. To be clear: Plaintiffs are herein alleging false advertising claims against WDC.  
18 Plaintiffs are not currently alleging design defect or product defect claims (although the facts  
19 could certainly support such claims). Plaintiffs, representing a national class, or in the  
20 alternative, 6 state subclasses, are confining this First Amended Complaint to WDC’s false  
21 statements and material omissions made in WDC’s advertising and promotion of the WD Red  
22 NAS hard drives containing SMR technology. In sum, WDC advertised these hard drives as  
23 being appropriate for NAS or RAID environments when in fact, due to WDC’s secret switch  
24 from CMR to SMR technology, these drives are not fit for the purpose advertised.

25 81. These misrepresentations and omissions by WDC are material, in that they are  
26 the type of representations on which an ordinary person would reasonably rely upon in  
27 conducting his or her affairs.

28 82. The Defendant is primarily engaged in the business of selling or leasing goods

1 or services. Each cause of action brought by Plaintiffs and the Class against Defendant in this  
2 pleading arises from and is limited to statements or conduct by Defendant that consist of  
3 representations of fact about Defendant's business operations, goods or services that is or was  
4 made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or  
5 commercial transactions in Defendant's goods or services or the statement is or was made in  
6 the course of delivering Defendant's goods or services. Each cause of action brought by  
7 Plaintiffs and the Class against Defendant in this pleading arises from and is limited to  
8 statements or conduct by Defendant for which the intended audience is an actual or potential  
9 buyer or customer, or a person likely to repeat the statements to, or otherwise influence, an  
10 actual or potential buyer or customer.

11 **PLAINTIFFS' FACTUAL ALLEGATIONS**

12 **Plaintiff Nicholas Malone**

13 83. Plaintiff Nicholas Malone is, and at all relevant times has been, a Wisconsin  
14 resident.

15 84. In March 2020, Malone desired to purchase a NAS device along with hard  
16 drives which were designed for use in that NAS device with a RAID setup. Malone wanted to  
17 store his important home personal data, media files, and computer backups in a centralized,  
18 large datastore with data redundancy and security features, and had determined that a NAS  
19 system utilizing RAID for redundancy and failure recovery was the best solution.

20 85. On March 6, 2020, Malone went to Amazon.com to shop for a NAS device and  
21 NAS-appropriate hard drives. Malone decided to purchase a QNAP 4-bay NAS device.

22 86. Malone then began researching the options available on Amazon for four 6TB  
23 NAS-appropriate hard drives to put into the QNAP NAS device. Malone previously had  
24 purchased and had been happy with many WDC hard drives over the years, and he understood  
25 them to have a good reputation for reliability and quality. Malone browsed the Amazon product  
26 webpage for the WD Red NAS 6TB hard drive, and viewed the advertising and product  
27 information (which was provided to Amazon by WDC). Besides seeing that the drive had  
28 "NAS" in the product name, Malone viewed the prominent bullet points on the product

1 webpage which stated: “**Specifically designed for use in NAS systems with up to 8 bays,**”  
2 “**Small and home office NAS systems in a 24/7 environment,**” and “**NASware firmware for**  
3 **compatibility.**”

4 87. Lower down on the product webpage for the WD Red NAS 6TB hard drive was  
5 a colorful product brochure labeled: “From the manufacturer.” Malone viewed the  
6 representations there, including: “**There’s a leading edge WD Red drive for every**  
7 **compatible NAS system to help fulfill your data storage needs... WD Red drives pack the**  
8 **power to store your precious data in one powerhouse unit**” and “**3D Active Balance Plus.**  
9 **Helps ensure your data is protected ... in a NAS or RAID environment.**” Based on these  
10 representations, Malone reasonably believed and understood the WD Red NAS 6TB hard drive  
11 was specifically designed and built for NAS device RAID environments like the QNAP system  
12 he intended to purchase and set up (unlike cheaper consumer desktop hard drives which were  
13 not purpose-built for NAS and RAID).

14 88. Malone had no idea the hard drives in fact utilized inferior and inappropriate  
15 SMR technology, which was not disclosed to him. Regardless, even if the letters “SMR” had  
16 appeared in the hard drive description, Malone would not have known what SMR was or what  
17 it stood for or what if any impact SMR had on hard drive performance.

18 89. Malone also viewed the product webpage for a NAS hard drive from a  
19 competing manufacturer, the Seagate IronWolf 6TB NAS hard drive. The Seagate hard drive  
20 was likewise advertised as having been designed and built for NAS and RAID for devices with  
21 up to 8 drive bays.

22 90. Relying on the representations regarding the WD Red NAS 6TB hard drive on  
23 the Amazon webpage, and also based on his prior good experience with WDC hard drives,  
24 Malone decided to purchase four of the WD Red NAS 6TB hard drives for \$150.12 each,  
25 paying a total of \$600.48 plus tax. The SKU for the hard drives was WD60EFAX. Malone also  
26 purchased the QNAP NAS device (the QNAP TS-453Be-4G-US) for \$548.89 plus tax.

27 91. After receiving the WD Red NAS hard drives and QNAP NAS device, Malone  
28 installed the hard drives into the QNAP and set up the device with RAID 5 redundancy.



1 92. Over the next month and a half, Malone gradually moved and copied his  
2 personal data and media files over to the NAS, and also stored backups of his computer system,  
3 filing the NAS with almost 18TB of important and valuable data. Malone noticed that the  
4 write/copy speed when transferring these files seemed to be slower and worse than he had  
5 previously experienced with other hard drives and other NAS devices.

6 93. In late April or early May 2020, Malone viewed a YouTube video about NAS  
7 setup and storage. During the video, the narrator began talking about the recent scandal about  
8 WDC having admitted that some of its WD Red NAS hard drives utilized SMR technology.  
9 The narrator explained that the SMR technology was inappropriate for NAS systems and  
10 should not have been advertised and sold for that purpose by WDC.

11 94. After viewing this video, Malone became concerned that he had purchased these  
12 SMR-technology WD Red NAS hard drives. After researching the matter further, he learned  
13 that the four hard drives he had purchased (with SKU WD60EFAX) did indeed utilize SMR  
14 recording technology.

15 95. Malone had been defrauded. Malone had bought the hard drives based on  
16 WDC's representations that the drives were purpose-built for NAS and RAID, and had  
17 specifically purchased and set up his system for the redundancy and failure recovery features  
18 that NAS with RAID provided. But the hard drives he purchased, contrary to WDC's express  
19 representations, were not appropriate for NAS or RAID. In fact, by using the hard drives for  
20 their intended and advertised purpose, in a NAS device with RAID, his data was now at  
21 increased risk.

22 96. Malone was now, and continues to be, extremely upset and worried about losing  
23 his data. The failure of a single drive could result in the loss of data due to the much longer  
24 RAID rebuild times (i.e., resilvering) as compared to CMR drives, which would put his data at  
25 increased risk. Malone is also unable to perform recommended and standard RAID "scrubbing"  
26 to ensure the integrity of his data and to automatically correct any disk errors, because the  
27 process could cause one or more hard drives to be kicked out of the RAID array, potentially  
28 causing data loss. In order to secure and protect his data, Malone now must now expend

1 hundreds more dollars and many hours of his time to purchase several external hard drives  
2 and/or a second NAS, and then copy his data over to the new storage.

3 97. Malone reasonably relied on WDC's misrepresentations and omissions of  
4 material facts. If Malone had known that the WD Red NAS hard drives he purchased utilized  
5 recording technology which was inappropriate for their intended and advertised use, Malone  
6 would not have purchased the hard drives. Malone would have purchased different hard drives  
7 that were truly appropriate for NAS and RAID use, such as the Seagate IronWolf 6TB NAS  
8 hard drive that he had also considered while shopping on Amazon.com. In fact, no other  
9 leading hard drive manufacturer uses this inferior SMR technology in its hard drives that are  
10 labeled for NAS or RAID use.

11 98. As a direct and proximate result of WDC's acts and omissions, Malone was  
12 harmed, suffered an injury-in-fact, and lost money or property.

13 99. Malone has a legal right to rely now, and in the future, on the truthfulness and  
14 accuracy of WDC's representations.

15 100. Malone would purchase WD NAS hard drives again if he could have confidence  
16 regarding the truth of WDC's representations regarding their appropriateness and fitness for  
17 NAS systems and RAID.

18 101. Malone will be harmed if, in the future, he is left to guess as to whether WDC's  
19 representations are accurate and whether there are omissions of material facts regarding the  
20 features or specifications of WDC's NAS hard drives.

21 102. If Malone were to purchase a WD NAS hard drive again without WDC having  
22 changed its unlawful and deceptive conduct alleged herein, Malone would be harmed on an  
23 ongoing basis and/or would be harmed once or more in the future.

24 **Plaintiff Chris Ayers**

25 103. Plaintiff Chris Ayers is, and at all relevant times has been, a Florida resident.

26 104. In May 2020, one of the hard drives in Ayers' four-bay Netgear ReadyNAS  
27 network-attached storage unit failed. At that time, the NAS unit, which Ayers utilized at his  
28 home to store personal files, contained four 3TB Western Digital Caviar Green hard drives in

1 RAID 5. Ayers had first installed the four 3TB Caviar Green drives approximately 8 years  
2 earlier. Three years after he had installed the Caviar Green hard drives, one of the drives had  
3 failed, and Ayers replaced it with an identical Caviar Green drive. Over the next five years  
4 Ayers did not have any other drive failures, until May 2020 when a second 3TB Caviar hard  
5 drive failed.

6 105. The ReadyNAS unit utilized a Linux software RAID technology which Netgear  
7 called X-RAID, which allowed mixing of different size drives to expand storage while  
8 maintaining redundancy such that one hard drive could fail without suffering data loss. When  
9 this 3TB Caviar Green drive failed in May 2020, Ayers replaced it with a Seagate 6TB drive.  
10 After he installed the replacement Seagate 6TB drive, the ReadyNAS took approximately 8  
11 hours to rebuild the RAID array and redistribute the data among the hard drives (i.e., to  
12 perform the RAID rebuilding, or “resilvering” process).

13 106. Ayers then decided to further expand the storage capacity of his ReadyNAS by  
14 replacing the remaining three 3TB hard drives with three larger 6TB hard drives. To do so,  
15 Ayers would need to purchase the three 6TB hard drives, and then replace the drives  
16 sequentially, waiting for the RAID volume to rebuild each time (and thus performing three  
17 separate rebuilds, one for each new drive).

18 107. On May 17, 2020, Ayers went to Amazon.com to shop for a new 6TB hard drive  
19 that was purpose-built for NAS devices like his. For over a decade, Ayers had purchased and  
20 had been happy with WDC hard drives, and he understood them to have a good reputation for  
21 reliability and quality. Ayers browsed the Amazon product webpage for the WD Red NAS 6TB  
22 hard drive, and viewed the advertising and product information (which was provided to  
23 Amazon by WDC). Besides seeing that the drive had “NAS” in the product name, Ayers  
24 viewed the prominent bullet points on the product webpage which stated: “**Specifically**  
25 **designed for use in NAS systems with up to 8 bays,**” “**Small and home office NAS systems**  
26 **in a 24/7 environment,**” and “**NASware firmware for compatibility.**”

27 108. Lower down on the product webpage for the WD Red NAS 6TB hard drive was  
28 a colorful product brochure labeled: “From the manufacturer.” Ayers viewed the

1 representations there, including: **“There’s a leading edge WD Red drive for every**  
2 **compatible NAS system to help fulfill your data storage needs... WD Red drives pack the**  
3 **power to store your precious data in one powerhouse unit”** and **“3D Active Balance Plus.**  
4 **Helps ensure your data is protected ... in a NAS or RAID environment.”** Based on these  
5 representations, Ayers reasonably believed and understood the WD Red NAS 6TB hard drive  
6 was specifically designed and built for NAS device RAID environments like his ReadyNAS  
7 system.

8 109. Ayers had no idea the WD Red NAS 6TB hard drive in fact utilized inferior and  
9 inappropriate SMR technology, which was not disclosed to him. Regardless, even if the letters  
10 “SMR” had appeared in the hard drive description, Ayers would not have known what SMR  
11 was or what it stood for or what if any impact SMR had on hard drive performance.

12 110. Relying on the representations regarding the WD Red NAS 6TB hard drive on  
13 the Amazon product webpage, and also based on his prior good experience with WDC hard  
14 drives, Ayers decided to purchase one WD Red NAS 6TB hard drive for \$156.83 plus tax. The  
15 SKU for the hard drive was WD60EFAX.

16 111. A few days later, on May 23, 2020, Ayers went to the same Amazon product  
17 webpage for the WD Red NAS 6TB hard drive, viewed the same advertising and  
18 representations on the webpage, and purchased two more of the drives for a total of \$303.98  
19 plus tax. The SKU for the hard drives was WD60EFAX.

20 112. After receiving the hard drives, Ayers replaced the first of his three remaining  
21 3TB drives with one of the WD Red NAS 6TB hard drives. This time, the resilvering process  
22 took much longer, approximately 14 hours.

23 113. After the resilvering process completed, Ayers replaced another of the 3TB  
24 drives with another of the new WD Red NAS 6TB hard drives. This time, the resilvering  
25 process took more than 24 hours.

26 114. After the resilvering process completed, Ayers replaced the third (and last  
27 remaining) 3TB drive with the third WD Red NAS 6TB hard drive. This time, the resilvering  
28 process went on for more than 24 hours, and then failed altogether. The ReadyNAS unit

1 became unresponsive. Ayers nervously rebooted the ReadyNAS unit. After rebooting, the  
2 resilvering process continued, and then finally completed after a few more hours.

3 115. Ayers was very concerned about the problems he had experienced in the  
4 resilvering process. Ayers was worried about potential data loss. Ayers also noticed that the  
5 performance of the ReadyNAS was now noticeably worse than before he had added the WD  
6 Red NAS 6TB drives. Ayers would occasionally experience strange delays, disconnects, and  
7 temporary “hangs” when accessing or writing data and when opening files, which he had not  
8 previously experienced prior to adding the WD Red NAS 6TB drives.

9 116. Ayers did an online search to try to learn why he was experiencing such poor  
10 performance. Ayers found and read an article on *Ars Technica* which discussed how WDC had  
11 snuck inferior SMR technology into its WD Red NAS hard drives, causing poor performance,  
12 hard disks to get knocked out of RAID arrays, and increased risk of data loss. After some  
13 further research, Ayers learned that WDC had recently admitted to the technology press that the  
14 WD Red NAS 6TB drives he purchased, with SKU WD60EFAX, were among these inferior  
15 and inappropriate SMR-technology drives.

16 117. Ayers had been defrauded. Ayers had bought the hard drives based on WDC’s  
17 representations that the drives were purpose-built for NAS and RAID. But the hard drives he  
18 purchased, contrary to WDC’s express representations, were not appropriate for NAS or RAID.  
19 Ayers’ data was now at risk, and he also was experiencing worse performance in his NAS than  
20 he had prior to installing the WD Red NAS hard drives.

21 118. Ayers was, and continues to be, extremely upset and worried about losing his  
22 data. The failure of a single drive could result in the loss of data due to the much longer RAID  
23 rebuild times (i.e., resilvering) of these SMR drive as compared to CMR drives. Ayers has  
24 already witnessed this much longer and riskier resilvering process first-hand. Meanwhile,  
25 Ayers is also unhappy with the slower performance he continues to experience in reading and  
26 writing files.

27 119. Ayers reasonably relied on WDC’s misrepresentations and omissions of material  
28 facts. If Ayers had known that the WD Red NAS hard drives he purchased utilized recording

1 technology which was inappropriate for their intended and advertised purpose, Ayers would not  
2 have purchased the hard drives. Ayers would have purchased different CMR-technology hard  
3 drives that were truly appropriate for NAS and RAID use instead.

4 120. As a direct and proximate result of WDC's acts and omissions, Ayers was  
5 harmed, suffered an injury-in-fact, and lost money or property.

6 121. Ayers would purchase WD NAS hard drives again if he could have confidence  
7 regarding the truth of WDC's representations regarding the drives' appropriateness and fitness  
8 for NAS systems and RAID.

9 122. Ayers will be harmed if, in the future, he is left to guess as to whether WDC's  
10 representations are accurate and whether there are omissions of material facts regarding the  
11 features or specifications of WDC's NAS hard drives.

12 **Plaintiff James Backus**

13 123. Plaintiff James Backus is, and at all relevant times has been, a Virginia resident.

14 124. In April 2020, Backus purchased a 5-bay Synology DS1019+ network attached  
15 storage device from Newegg.com for use in his home. Backus also planned to purchase two  
16 4TB NAS drives and two 6TB NAS hard drives which were purpose-built for use in a NAS  
17 RAID device like the Synology unit.

18 125. Over the past decade, Backus had been loyal to the Western Digital brand and  
19 its WD Red NAS hard drives based on their reputation for being best-in-class for NAS and  
20 RAID, and based on his excellent experience with their performance. Backus had previously  
21 purchased at least eight WD Red NAS drives, many of which he was still using in another  
22 Synology DS410j NAS unit and in a PC server with a RAID array.

23 126. On April 11, 2020, Backus visited Amazon.com and browsed the product  
24 webpage for the WD Red NAS 4TB hard drive. Backus viewed the advertising and product  
25 information (which was provided to Amazon by WDC) on the product webpage. Backus  
26 viewed the prominent bullet points on the product webpage which stated: "**Specifically**  
27 **designed for use in NAS systems with up to 8 bays,**" "**Small and home office NAS systems**  
28 **in a 24/7 environment,**" "**NASware firmware for compatibility,**" and "**Supports up to**

1 **180TB/yr workload rate.”**

2 127. Lower down on the product webpage for the WD Red NAS 4TB hard drive was  
3 a colorful product brochure labeled: “From the manufacturer.” Backus viewed the  
4 representations there, including: “**There’s a leading edge WD Red drive for every**  
5 **compatible NAS system to help fulfill your data storage needs... WD Red drives pack the**  
6 **power to store your precious data in one powerhouse unit**” and “**3D Active Balance Plus.**  
7 **Helps ensure your data is protected ... in a NAS or RAID environment.**” Based on these  
8 representations, and based on his own past excellent experience with WD Red NAS hard drives  
9 in his NAS devices and PC RAID storage arrays which was consistent with these  
10 representations, Backus reasonably believed and understood the WD Red NAS 4TB hard drive  
11 was specifically designed, built, and optimized for NAS device RAID environments like the  
12 Synology DS1019+ unit.

13 128. Backus had no idea the WD Red NAS 4TB hard drive in fact utilized inferior  
14 and inappropriate SMR technology (unlike all of the WD Red NAS drives he had previously  
15 purchased and used), which was not disclosed to him.

16 129. Relying on the representations regarding the WD Red NAS 4TB hard drive on  
17 the Amazon product webpage, and also based on his prior good experience with WDC hard  
18 drives, Backus decided to purchase two WD Red NAS 4TB hard drives for \$203.98 plus tax.  
19 The SKU for the hard drives was WD40EFAX.

20 130. That same day on April 11, 2020, Backus visited Newegg.com and browsed the  
21 product webpage for the WD Red NAS 6TB hard drive. Backus viewed the advertising and  
22 product information on the product webpage (which was provided to Newegg by WDC).  
23 Backus viewed the prominent bullet points on the product webpage which stated: “**Specifically**  
24 **designed for use in NAS systems with up to 8 bays,**” “**Small and home office NAS systems**  
25 **in a 24/7 environment,**” “**NASware firmware for compatibility,**” and “**Supports up to**  
26 **180TB/yr workload rate.”**

27 131. Lower down on the product webpage for the WD Red NAS 4TB hard drive was  
28 a colorful product brochure provided and created by WDC. Backus viewed the representations

1 there, including: **“There’s a leading edge WD Red drive for every compatible NAS system**  
2 **to help fulfill your data storage needs... WD Red drives pack the power to store your**  
3 **precious data in one powerhouse unit”**; **“The drive for NAS. Desktop drives aren’t**  
4 **typically tested or designed for the rigors of a NAS system. Do right by your NAS and**  
5 **choose the drive with an array of features to help preserve your data and maintain**  
6 **optimum performance”**; and **“Built for NAS Compatibility. WD Red drives with NASware**  
7 **3.0 technology are purpose-built to balance performance and reliability in NAS and**  
8 **RAID environments.”**

9 132. Backus had no idea that the WD Red NAS 6TB hard drive in fact utilized  
10 inferior and inappropriate SMR technology, which was not disclosed to him.

11 133. Relying on the representations regarding the WD Red NAS 6TB hard drive on  
12 the Newegg.com product webpage, and also based on his prior good experience with WDC  
13 hard drives, Backus decided to purchase two WD Red NAS 6TB hard drives for \$317.98 plus  
14 tax. The SKU for the hard drives was WD60EFAX.

15 134. When Backus received the four hard drives, he installed them into the Synology  
16 DS1019+ NAS unit. He configured the Synology to set the four drives up in a RAID 10 array,  
17 where they would be split into two groups of 8TB arrays, each having one 4TB drive, and one  
18 6TB drive that was formatted as a 4TB drive. The two 8TB arrays would be clones of each  
19 other for redundancy and reliability. Backus then started the build process for the RAID 10  
20 array, which took longer than he expected to complete as compared to his past experience of  
21 resilvering with his other WD Red NAS drives.

22 135. A key reason Backus set up the drive array with RAID 10 in this way was to  
23 enable and facilitate ready expansion when needed. When he needed more capacity later, his  
24 plan was to first replace one of the 4TB drives with another 6TB Red NAS drive (but to format  
25 it as a 4TB drive), and then rebuild the array with the new drive. Then he would replace the  
26 other 4TB drive with another 6TB Red NAS drive in the same way. Finally, once all the drives  
27 were WD 6TB Red NAS drives, he would expand the volume size on the drives from 4TB to  
28 6TB. This process necessarily would require two full RAID rebuilds (i.e., two resilvering



1 processes) to expand his data capacity.

2 136. Backus populated the fifth bay of the Synology DS1019+ with a stand-alone  
3 older hard drive containing many small files and family photos which he wanted to copy onto  
4 the new storage array. After the resilvering process had completed on the storage array, Backus  
5 began copying several terabytes of data from this older hard drive over to the new RAID array.  
6 Backus noticed that the copy performance was poor and slow, with stops and starts. After a  
7 period of time, the copying process would slow dramatically, freeze up, and then after a while  
8 speed up again, only to repeat the process ad nauseam.

9 137. After the copying finally completed, Backus noticed that the storage array on the  
10 Synology DS1019+ continued to perform more poorly than he expected based on his past  
11 experience. Backus would occasionally experience strange delays, disconnects, and temporary  
12 “hangs” when accessing or writing data and on opening files, which he had not previously  
13 experienced with his other NAS units and RAID arrays. Backus also noticed delays and stops  
14 and starts when playing videos stored on the storage array, which he had never previously  
15 experienced with his other hard drives.

16 138. In late April, Backus read an article on *Ars Technica* about how WDC had snuck  
17 inferior and inappropriate SMR technology into its WD Red NAS hard drives, causing poor  
18 performance, hard disks to get knocked out of RAID arrays, and increased risk of data loss.  
19 After some further research, Backus learned that WDC had recently admitted to the technology  
20 press that the WD Red NAS 4TB and 6TB drives he purchased, with SKUs WD40EFAX and  
21 WD60EFAX, were among these inferior SMR-technology drives.

22 139. Notably, after WDC publicly admitted in late April 2020 that certain SKUs of its  
23 WD Red NAS hard drives now contained SMR technology<sup>28</sup>, Synology (the manufacturer of  
24 Backus’ NAS device) removed those SMR hard drives from Synology’s compatibility list—  
25 including the hard drives with SKUs WD40EFAX and WD60EFAX which Backus had  
26 purchased. Based on the investigation of Plaintiffs’ counsel, Synology customer support staff

27 \_\_\_\_\_  
28 <sup>28</sup> Specifically, the following SKUs: WD20EFAX, WD30EFAX, WD40EFAX, and  
WD60EFAX.

1 now tell Synology customers, when asked, that they should not use these SMR-technology WD  
2 Red NAS drives in Synology products and that the drives are not supported.

3 140. Backus had been defrauded. Backus felt betrayed and taken advantage of by  
4 WDC. WDC had tricked Backus into relying on the past reputation and performance of WD  
5 Red NAS drives. WDC had secretly snuck the inferior SMR-technology into the drives to  
6 increase its short-term profits while exploiting customers like Backus whom WDC kept in the  
7 dark. WDC had continued to promise and advertise that the WD Red NAS hard drives he  
8 purchased were “purpose-built” for NAS devices and RAID and that the drives were  
9 compatible with his Synology unit. But the hard drives he purchased, contrary to WDC’s  
10 express representations, were not appropriate for NAS or RAID, and Synology now states that  
11 the drives are inappropriate for and are not supported in its NAS units.

12 141. Backus’ data was now at risk, and he also was experiencing worse performance  
13 in his NAS than he had ever experienced before with other drives that (in contrast) had truly  
14 been appropriate for NAS and RAID.

15 142. Backus was, and continues to be, extremely upset and worried about losing his  
16 data, especially in the event he needs to perform a RAID rebuild. The failure of a single drive  
17 could result in the loss of data due to the inferior technology and much longer RAID rebuild  
18 times (i.e., resilvering) of these SMR drives as compared to CMR drives. Backus had  
19 specifically purchased these drives for their appropriateness and reliability in RAID and  
20 resilvering, because his entire expansion plan was contingent on performing multiple RAID  
21 rebuilds in sequence. Yet now he could no longer do so, because he would be putting his data at  
22 increased risk due to the inappropriate SMR technology utilized by these hard drives. In order  
23 to secure and protect his data, Backus must now expend hundreds more dollars and many hours  
24 of his time to purchase several external hard drives and/or another NAS device, and then copy  
25 his data over to the new storage, which he cannot now afford to do.

26 143. Backus reasonably relied on WDC’s misrepresentations and omissions of  
27 material facts. If Backus had known that the WD Red NAS hard drives he purchased utilized  
28 recording technology which was inappropriate for the drives’ intended and advertised use,

1 Backus would not have purchased the hard drives. Backus would have purchased different  
2 CMR-technology hard drives that were truly appropriate for NAS and RAID use instead.

3 144. As a direct and proximate result of WDC's acts and omissions, Backus was  
4 harmed, suffered an injury-in-fact, and lost money or property.

5 145. Backus would purchase WD NAS hard drives again if he could have confidence  
6 regarding the truth of WDC's representations regarding the drives' appropriateness and fitness  
7 for NAS systems and RAID.

8 146. Backus will be harmed if, in the future, he is left to guess as to whether WDC's  
9 representations are accurate and whether there are omissions of material facts regarding the  
10 features or specifications of WDC's NAS hard drives.

11 **Plaintiff David Eaton**

12 147. Plaintiff David Eaton is, and at all relevant times has been, a Missouri resident.

13 148. In September 2017, Eaton purchased a 4-bay Synology DS416play NAS unit  
14 along with two WD Red NAS 4TB drives. The hard drives utilized traditional CMR  
15 technology. The Synology NAS unit utilized a Linux software RAID technology which  
16 Synology called Synology Hybrid RAID (or "SHR"), which allowed mixing of different size  
17 drives to expand storage while maintaining redundancy such that one hard drive could fail  
18 without suffering data loss.

19 149. Eaton installed the two WD Red NAS 4TB drives in the NAS, along with a 1TB  
20 drive and a 2TB drive that he already had, creating a SHR storage pool. Later, he swapped out  
21 the 1TB drive for a 2TB drive which he purchased. The resilvering process to rebuild the RAID  
22 array and redistribute the data among the hard drives including the new 2TB drive took  
23 approximately 8 hours.

24 150. On April 6, 2020, Eaton was shopping at his local Micro Center computer store  
25 in Brentwood, Missouri, when he saw WD Red NAS 6TB hard drives on display and for sale.  
26 For many years, Eaton had purchased and had been happy with WDC hard drives, and he  
27 understood them to have a good reputation for reliability and quality. Eaton understood that  
28 WD Red NAS drives were purpose-built for NAS devices with RAID setups like his Synology

1 NAS. Eaton had been happy with his existing WD Red NAS 4TB hard drives and their  
2 performance.

3 151. Eaton saw that the outside box for the WD Red NAS 6TB drives stated “WD  
4 RED 3.5” NAS HARD DRIVE” and “RAID OPTIMIZED.” Eaton understood that the WD  
5 Red NAS hard drives were premium hard drives that were purpose-built for NAS and RAID,  
6 unlike cheaper desktop drives. The advertising and statements on the box of the WD Red NAS  
7 drives confirmed his understanding.

8 152. Eaton had no idea the WD Red NAS 6TB hard drive in fact utilized inferior and  
9 inappropriate SMR technology, which was not disclosed to him. Regardless, even if Eaton had  
10 seen the letters “SMR” in the hard drive description, he would not have known what SMR was  
11 or what it stood for or what if any impact SMR had on hard drive performance.

12 153. Relying on the representations on the box of the WD Red NAS 6TB hard drive,  
13 including the “NAS” in the name of the drive, the drive being advertised as “Raid Optimized,”  
14 and also based on Eaton’s prior good experience with the two WD Red NAS 4TB drives which  
15 were currently in his Synology NAS, Eaton decided to buy one WD Red NAS 6TB hard drive.  
16 Eaton purchased the WD Red NAS 6TB drive for \$149.99 plus tax.

17 154. Eaton replaced one of his existing 2TB drives with the WD Red NAS 6TB hard  
18 drive, and the Synology NAS began the resilvering process.

19 155. Eaton decided that he wanted to increase the storage capacity of his storage  
20 array even further, by also replacing the last 2TB drive in the Synology with another WD Red  
21 NAS 6TB drive.

22 156. The next day, on April 7, 2020, Eaton visited the Micro Center computer store  
23 again to purchase a second WD Red NAS 6TB hard drive.

24 157. After Eaton returned home with the second hard drive from the Micro Center  
25 computer store, he was surprised to see that the resilvering process with the first WD Red NAS  
26 6TB drive had not completed. Previously, with the 2TB hard drive, it had taken less than 10  
27 hours to complete the resilvering process.

28 158. In fact, this time with the WD Red NAS 6TB drive, the resilvering process

1 ultimately took seven days – almost 17 times as long as the prior drive had taken.

2 159. After the resilvering process had completed, Eaton replaced the last 2TB drive  
3 with the second WD Red NAS 6TB drive he had purchased. The resilvering process again took  
4 approximately seven days.

5 160. Eaton uses the Synology NAS to store personal documents, family photos, and  
6 to store and serve videos and movies.

7 161. Eaton noticed that after the WD Red NAS 6TB hard drives were incorporated  
8 into his storage pool, playback of videos was often choppy with stops and starts—which he had  
9 not previously experienced prior to adding the WD Red NAS 6TB drives.

10 162. After experiencing this worse video playback performance and the extremely  
11 long resilvering process of seven days per drive, Eaton became concerned about the reliability  
12 of the hard drives in his storage array and the possibility of data loss.

13 163. In late April, Eaton read an article on *Ars Technica* about how WDC had snuck  
14 inferior and inappropriate SMR technology into its WD Red NAS hard drives, causing poor  
15 performance, hard disks to get knocked out of RAID arrays, and increased risk of data loss.  
16 Eaton learned that WDC had admitted that it had switched WD Red NAS 6TB hard drives with  
17 the SKU WD60EFAX to the SMR technology. Eaton checked the web interface of his  
18 Synology NAS and saw that the two WD Red NAS 6TB hard drives were in fact the  
19 WD60EFAX drives with the inferior SMR technology.

20 164. Notably, after WDC publicly admitted in late April 2020 that certain SKUs of its  
21 WD Red NAS hard drives now contained SMR technology<sup>29</sup>, Synology (the manufacturer of  
22 Eaton’s NAS device) removed those SMR hard drives from its compatibility list—including the  
23 hard drive with SKU WD60EFAX which Eaton had purchased. Based on the investigation of  
24 Plaintiffs’ counsel, Synology customer support staff now tell Synology customers, when asked,  
25 that they should not use these SMR-technology WD Red NAS drives in their Synology  
26 products and that the drives are not supported.

27 \_\_\_\_\_  
28 <sup>29</sup> Specifically, the following SKUs: WD20EFAX, WD30EFAX, WD40EFAX, and  
WD60EFAX.

1           165. Eaton had been defrauded. Eaton felt betrayed and taken advantage of by WDC.  
2 WDC had tricked Eaton into relying on the past reputation and performance of WD Red NAS  
3 drives. WDC had secretly snuck the inferior SMR-technology into the drives to increase its  
4 short-term profits while exploiting customers like Eaton whom WDC kept in the dark. WDC  
5 had continued to promise and advertise that the WD Red NAS hard drives he purchased were  
6 designed for NAS devices like his Synology unit. But the hard drives he purchased were not  
7 appropriate for NAS or RAID, and Synology now states that the drives are inappropriate for  
8 and are not supported in its NAS units.

9           166. Eaton was, and continues to be, extremely upset and worried about losing his  
10 data. The failure of a single drive could result in the loss of data due to the much longer RAID  
11 rebuild times—e.g., resilvering now takes seven days, as Eaton experienced when he installed  
12 the SMR drives, compared to the less than one day resilvering process which would be typical  
13 with a CMR drive. Eaton felt lucky he had not lost data the last time he resilvered with the  
14 SMR drives, and he does not want to push his luck further. Meanwhile, Eaton is also unhappy  
15 with the slower performance he continues to experience including choppy video playback.

16           167. Eaton reasonably relied on WDC's misrepresentations and omissions of material  
17 facts. If Eaton had known that the WD Red NAS hard drives he purchased utilized recording  
18 technology which was inappropriate for the drives' intended and advertised use, Eaton would  
19 not have purchased the hard drives. Eaton would have purchased different CMR-technology  
20 hard drives that were truly appropriate for NAS and RAID use instead.

21           168. As a direct and proximate result of WDC's acts and omissions, Eaton was  
22 harmed, suffered an injury-in-fact, and lost money or property.

23           169. Eaton would purchase WD NAS hard drives again if he could have confidence  
24 regarding the truth of WDC's representations regarding the drives' appropriateness and fitness  
25 for NAS systems and RAID.

26           170. Eaton will be harmed if, in the future, he is left to guess as to whether WDC's  
27 representations are accurate and whether there are omissions of material facts regarding the  
28 features or specifications of WDC's NAS hard drives.

1           **Plaintiff Steve Gravel**

2           171. Plaintiff Steve Gravel is, and at all relevant times has been, a New York  
3 resident.

4           172. In August 2019, Gravel purchased four WD Red NAS 4TB drives from  
5 Amazon.com for his 4-bay QNAP TS-453Be network attached storage device which he used in  
6 his home for personal use. Gravel purchased the 4TB WD Red NAS hard drives because they  
7 were advertised as being “purpose-built” for NAS and RAID, and he understood WD Red NAS  
8 hard drives to have a good reputation for such usage. The hard drives utilized traditional CMR  
9 technology. The SKU for the hard drives was WD40EFRX. Gravel installed the hard drives in  
10 the QNAP and set up the storage array with RAID 5 redundancy.

11           173. Gravel utilized the QNAP NAS for random-write intensive workloads including  
12 iSCSI volumes and mixed content file shares. He also used the QNAP as a media server to  
13 store and play movies which he owned. Gravel was happy with the performance of the hard  
14 drives in his QNAP. Gravel’s only regret was that he had not purchased larger capacity hard  
15 drives, because he soon began running out of storage capacity.

16           174. A few months later, in December 2019, Gravel decided to expand his storage  
17 capacity. Gravel purchased an external 4-bay QNAP expansion unit (the QNAP TR-004) that  
18 externally connected directly to the QNAP TS-452Be NAS device via a USB-C cable, so he  
19 could move his existing WD40EFRX drives to the expansion unit as a second storage array. He  
20 planned to rebuild the first storage array in the main QNAP TS-452Be unit with four new larger  
21 capacity NAS hard drives. Both of the arrays would be independently set up with RAID 5, and  
22 both would be managed by the computing processor and software interface of the main QNAP  
23 TS-452Be NAS device.

24           175. On December 14, 2019, Gravel went to Newegg.com to shop for four larger  
25 hard drives that were purpose-built for NAS devices like his. Gravel was considering  
26 purchasing either Seagate IronWolf NAS hard drives or more WD Red NAS hard drives. Both  
27 the Seagate and Western Digital hard drives were advertised as having been designed and built  
28 for NAS and RAID for devices with up to 8 drive bays.

1 176. Given Gravel's good experience with his current WD Red NAS drives, he  
2 gravitated towards purchasing more WD Red NAS drives.

3 177. Gravel browsed the Newegg.com product webpage for the WD Red NAS 6TB  
4 hard drive. Based on the advertising and representations on the product webpage, Gravel  
5 reasonably assumed and understood that the WD Red NAS 6TB drive advertised there was  
6 virtually identical in performance to his existing, and excellent performing, WD Red NAS 4TB  
7 drives, but with 2TB greater capacity.

8 178. Gravel viewed the advertising and product information on the product webpage  
9 (which was provided to Newegg by WDC). Gravel viewed the prominent bullet points on the  
10 product webpage which stated: **"Specifically designed for use in NAS systems with up to 8**  
11 **bays," "Small and home office NAS systems in a 24/7 environment," "NASware firmware**  
12 **for compatibility," and "Supports up to 180TB/yr workload rate."**

13 179. Lower down on the product webpage for the WD Red NAS 6TB hard drive was  
14 a colorful product brochure provided and created by WDC. Gravel viewed the representations  
15 there, including: **"There's a leading edge WD Red drive for every compatible NAS system**  
16 **to help fulfill your data storage needs... WD Red drives pack the power to store your**  
17 **precious data in one powerhouse unit"; "The drive for NAS. Desktop drives aren't**  
18 **typically tested or designed for the rigors of a NAS system. Do right by your NAS and**  
19 **choose the drive with an array of features to help preserve your data and maintain**  
20 **optimum performance"; and "Built for NAS Compatibility. WD Red drives with NASware**  
21 **3.0 technology are purpose-built to balance performance and reliability in NAS and**  
22 **RAID environments."**

23 180. Based on these representations, Gravel reasonably believed and understood the  
24 WD Red NAS 6TB hard drive was specifically designed and built for NAS device RAID  
25 environments like his QNAP system, and that the drive would perform just as well in that  
26 environment as the WD Red NAS 4TB drives he had previously purchased only a couple of  
27 months earlier and which he was currently using.

28 181. Gravel had no idea that the WD Red NAS 6TB hard drive now being offered by



1 Newegg in fact utilized inferior and inappropriate SMR technology, which WDC had snuck  
2 into the drives and which was not disclosed to him. Regardless, even if the letters “SMR” had  
3 appeared in the hard drive description, Gravel would not have known what SMR was or what it  
4 stood for or what if any impact SMR had on hard drive performance.

5 182. Relying on the representations regarding the WD Red NAS 6TB hard drive on  
6 the Newegg product webpage, and also based on his prior good experience with WD Red NAS  
7 hard drives, Gravel decided to purchase four WD Red NAS 6TB hard drives for \$539.96 plus  
8 tax. The SKU for the hard drives was WD60EFAX.

9 183. Gravel installed the hard drives into the QNAP main unit, replacing and  
10 removing the older 4TB WD40EFRX drives that had previously been installed there. Gravel  
11 continued to store the iSCSI volumes and mixed content file shares in the main unit on this  
12 RAID 5 storage array with the new 6TB WD60EFAX drives. Like before, this meant that he  
13 regularly and necessarily performed intensive random writes and reads on the drives.

14 184. Gravel noticed that the write and read performance on this new storage array  
15 was sluggish and very poor, in particular when being utilized for iSCSI and mixed content file  
16 shares. Workloads in general would perform more slowly than with the prior WD40EFRX  
17 storage array, and he also noticed that large file transfers would start fast but then after a few  
18 minutes would bog down with poor and slow write performance. In short, Gravel found that the  
19 new WD Red NAS 6TB hard drive array (SKU WD60EFAX) was unable to adequately  
20 perform the same tasks and jobs that his older WD Red NAS 4TB hard drive array (SKU  
21 WD40EFRX) had readily and easily performed.

22 185. Gravel was puzzled and disappointed by this very poor performance. Gravel was  
23 unable to use the new hard drives for their intended and advertised purpose.

24 186. After Gravel had installed these poor-performing WD Red NAS 6TB hard  
25 drives in the QNAP, Gravel had moved his four older WD Red NAS 4TB drives (SKU  
26 WD40EFRX) to the QNAP TR-004 external 4-bay expansion unit. The expansion unit was  
27 connected externally to the main QNAP TS-452Be unit via a USB-C cable. Gravel set up a  
28 second RAID 5 array on these old WD Red NAS 4TB drives in the expansion unit.

1 187. Given the consistently poor, and puzzling, performance of the first RAID 5 array  
2 in the main QNAP unit with the new WD Red NAS 6TB hard drives, Gravel decided to move  
3 his iSCSI data and mixed content file share onto the second datastore on the external expansion  
4 unit containing his older WD40EFRX drives, given those older drives previously performed  
5 well with that workload.

6 188. Sure enough, once Gravel moved the iSCSI data and mixed content file share  
7 over to the expansion unit datastore with the older WD Red NAS 4TB drives, the performance  
8 improved dramatically to the same excellent level it had been before on those same  
9 WD40EFRX hard drives back when they had been installed in the main QNAP TS-452Be unit.  
10 Writes and reads and file transfers were no longer sluggish or choppy, and the performance was  
11 now consistent and excellent.

12 189. Gravel decided to repurpose the newer (and poor performing) WD Red NAS  
13 6TB datastore in the main QNAP unit for the lightweight and undemanding job of being a  
14 media server for playing movies that he owned. The drives were simply too poor performing  
15 for anything else.

16 190. In late April 2020, Gravel read an article on *Ars Technica* which discussed how  
17 WDC had snuck inferior and inappropriate SMR technology into its new WD Red NAS hard  
18 drives, causing poor performance, hard disks to get knocked out of RAID arrays, and increased  
19 risk of data loss. After some further research, Gravel learned that WDC had recently admitted  
20 to the technology press that the WD Red NAS 6TB drives he purchased, with SKU  
21 WD60EFAX, were among these inferior SMR-technology drives. When Gravel read this, he  
22 thought to himself that this suddenly made a whole lot of sense. Now there was an explanation  
23 for the strangely terrible performance he had experienced with the WD60EFAX drives he  
24 purchased. The problems and poor performance he had observed were consistent with the  
25 problems and complaints about these SMR drives now being reported by the online press and  
26 by consumers in online comments.

27 191. Gravel had been defrauded. Gravel had bought the hard drives based on WDC's  
28 representations that the drives were purpose-built for NAS and RAID. But the hard drives he

1 purchased, contrary to WDC's express representations, were not appropriate for NAS or RAID,  
2 and were not appropriate for sustained random writes or usage in iSCSI datastores. Gravel was  
3 unable to use the new hard drives for their intended and advertised purpose.

4 192. Gravel was also upset about the increased risk of losing his video and movie  
5 files stored on the SMR WD Red NAS 6TB drives. The failure of a single drive could result in  
6 the loss of data due to poorer performance in RAID rebuilds, where a second drive could fail or  
7 drop out of the array like other purchasers had reported happened to them.

8 193. Gravel reasonably relied on WDC's misrepresentations and omissions of  
9 material facts. If Gravel had known that the WD Red NAS hard drives he purchased utilized  
10 recording technology which was inappropriate for their intended and advertised use, Gravel  
11 would not have purchased the hard drives. Gravel would have purchased different CMR-  
12 technology hard drives that were truly appropriate for NAS and RAID use instead.

13 194. As a direct and proximate result of WDC's acts and omissions, Gravel was  
14 harmed, suffered an injury-in-fact, and lost money or property.

15 195. Gravel would purchase WD NAS hard drives again if he could have confidence  
16 regarding the truth of WDC's representations regarding the drives' appropriateness and fitness  
17 for NAS systems and RAID.

18 196. Gravel will be harmed if, in the future, he is left to guess as to whether WDC's  
19 representations are accurate and whether there are omissions of material facts regarding the  
20 features or specifications of WDC's NAS hard drives.

21 **Plaintiff Tod Weitzel**

22 197. Plaintiff Tod Weitzel is, and at all relevant times has been, a California resident.

23 198. In June 2018, Weitzel purchased a Dell PC with a hardware RAID card. Weitzel  
24 set up the PC as a FreeNAS network attached storage server for his home use, with six hard  
25 drives set up in a ZFS storage pool.

26 199. Weitzel used the FreeNAS server to store and access personal files and media,  
27 and also to run virtual machines (software emulations of physical computers).

28 200. By April 2020, Weitzel had populated the FreeNAS server ZFS storage pool

1 with five WD Red NAS 4TB hard drives (SKU WD40EFRX), and one WD Red NAS 3TB  
2 hard drive (SKU WD30EFRX). All of these WD Red NAS hard drives utilized traditional  
3 CMR technology.

4 201. However, the storage pool of the FreeNAS server was almost full, and Weitzel  
5 decided to replace the sole 3TB hard drive with another WD Red NAS 4TB hard drive to add  
6 more capacity.

7 202. Weitzel had previously purchased WD Red NAS hard drives because they were  
8 advertised as being “purpose-built” for NAS devices and FreeNAS ZFS pools, and he  
9 understood WD Red NAS hard drives to have a good reputation for such usage. Weitzel also  
10 knew and relied on the fact that the creator of the FreeNAS storage software, iXsystems, was a  
11 vendor partner of WDC and that iXsystems explicitly recommended WD Red NAS hard drives  
12 for use in FreeNAS systems. In fact, many of the FreeNAS hardware systems which iXsystems  
13 itself manufactured and offered for sale on its website came pre-populated with WD Red NAS  
14 hard drives. Meanwhile, Weitzel had been happy with his WD Red NAS hard drives and their  
15 performance in his existing FreeNAS ZFS storage pool.

16 203. Based on his prior good experience with WD Red NAS hard drives and WDC’s  
17 promotion and advertising of the hard drives for NAS systems like his, Weitzel desired to  
18 purchase another WD Red NAS 4TB drive.

19 204. On April 14, 2020, Weitzel visited eBay.com to purchase another WD Red NAS  
20 4TB hard drive. Weitzel navigated to an eBay product webpage for the drive. The description  
21 contained a manufacturer-provided image of the hard drive titled “WD RED 3.5” NAS HARD  
22 DRIVE,” and stated the hard drive was “new” and was a “Western Digital NAS WD40EFAX  
23 4TB SATA 256M Cache 3.5" WD Red.” Weitzel reasonably assumed and understood that this  
24 WD Red NAS 4TB drive was virtually identical in performance to his existing, and excellent  
25 performing, five other WD Red NAS 4TB drives, and that as WDC advertised for all its WD  
26 Red NAS hard drives, the hard drive was “purpose-built” for NAS and FreeNAS systems like  
27 his.

28 205. Weitzel had no idea the WD Red NAS 4TB hard drive in fact utilized inferior

1 and inappropriate SMR technology, which was not disclosed to him.

2 206. Relying on the representations regarding the WD Red NAS 4TB hard drive, and  
3 based on his prior good experience with WD Red NAS hard drives and WDC's promotion and  
4 advertising of the hard drives for NAS systems like his, Weitzel purchased the hard drive for  
5 \$115.00 plus tax.

6 207. Weitzel received the hard drive on April 16, 2020. He then replaced the WD  
7 Red NAS 3TB drive in his storage pool with this new hard drive and began the resilvering  
8 process. While the ZFS pool was still in the resilvering process, Weitzel saw and read the *Ars*  
9 *Technica* article which discussed how WDC had recently snuck inferior and inappropriate SMR  
10 technology into its WD Red NAS hard drives, causing poor performance, hard disks to get  
11 knocked out of RAID arrays, and increased risk of data loss particularly during the resilvering  
12 process. Weitzel then learned that the WD Red NAS 4TB drive he purchased (SKU  
13 WD40EFAX), which was currently in the middle of the resilvering process, was among these  
14 inferior SMR-technology drives.

15 208. In addition to being upset after learning of the poor drive performance, Weitzel  
16 became very concerned that the resilvering process may fail and that he could suffer data loss.

17 209. Thankfully, the resilvering process finally completed.

18 210. However, after the drive was integrated and the ZFS array resilvering process  
19 had completed, Weitzel now experienced terrible read and write performance in his ZFS pool.

20 211. For example, reading and opening files became much slower than it used to be  
21 prior to adding the WD40EFAX drive, especially for folders with large amounts of files. A  
22 shared folder that used to take about 12 seconds to display all the file contents, now took up to  
23 45 seconds. Weitzel also operated a Nextcloud virtual machine instance (a local file sharing  
24 software platform) on the FreeNAS system. The Nextcloud operations likewise were now  
25 significantly slower and often sputtered. Weitzel also used a Plex media server stored on the  
26 FreeNAS system for recording and playing back over-the-air TV. The performance became  
27 abysmal, such that the data would stall when recording and then stop altogether such that  
28 recording video became impossible. Video and media playback was also plagued with

1 intermittent buffering and stops and starts.

2 212. Over the next few weeks, Weitzel became increasingly frustrated with the now-  
3 terrible performance of the ZFS pool. Weitzel purchased a Seagate IronWolf NAS 4TB drive to  
4 replace the poor-performing (and virtually unusable) WD Red NAS SMR-technology drive.  
5 Weitzel knew that all Seagate NAS-labeled drives exclusively used CMR technology like his  
6 older WD Red NAS drives had. Weitzel had read in another *Ars Technica* article that Seagate  
7 had publicly affirmed that “Seagate only produces NAS drives that are CMR. We do not have  
8 any SMR drives in our IronWolf and IronWolf Pro drives, which are NAS solutions...[W]e  
9 don’t recommend SMR for NAS.”<sup>30</sup>

10 213. On May 31, 2020, Weitzel replaced the SMR-technology WD Red NAS 4TB  
11 (SKU WD40EFAX) drive with the IronWolf NAS 4TB drive. With the WD40EFAX removed,  
12 the resilvering process completed within a few hours without issue.

13 214. After the resilvering process for the FreeNAS ZFS disk array had completed,  
14 Weitzel immediately noticed that the disk performance had dramatically improved. The  
15 performance had returned back to the excellent level it had been prior to having added the (now  
16 removed) SMR-technology WD40EFAX hard drive.

17 215. Notably, since WDC publicly admitted in late April 2020 that certain SKUs of  
18 its WD Red NAS hard drives now contained SMR technology<sup>31</sup>, iXsystems (the developer of  
19 the FreeNAS software that Weitzel utilizes on his server) now states that SMR WD Red NAS  
20 drives are not compatible with FreeNAS and ZFS, and iXsystems recommends that FreeNAS  
21 users not install SMR WD Red NAS drives in their FreeNAS systems.

22 216. Weitzel had been defrauded. Weitzel felt betrayed and taken advantage of by  
23 WDC. WDC had tricked Weitzel into relying on the past reputation and performance of WD  
24 Red NAS drives. WDC had secretly snuck the inferior SMR-technology into the drives to  
25 increase its short-term profits while exploiting customers like Weitzel whom WDC kept in the

26 \_\_\_\_\_  
27 <sup>30</sup> See <https://arstechnica.com/information-technology/2020/04/seagate-says-network-attached-storage-and-smr-dont-mix/>.

28 <sup>31</sup> Specifically, the following SKUs: WD20EFAX, WD30EFAX, WD40EFAX and WD60EFAX.

1 dark. WDC had continued to promise and advertise that the WD Red NAS hard drives he  
2 purchased were designed for NAS and storage devices like his FreeNAS server. But the SMR  
3 hard drives he purchased were not appropriate for NAS devices or storage servers, and in fact  
4 WDC's vendor-partner iXsystems now states that the SMR drives are inappropriate for use in  
5 FreeNAS systems like Weitzel's.

6 217. In fact, the SMR-technology WD Red NAS 4TB hard drive that Weitzel  
7 purchased was useless and completely worthless for its intended purpose. This drive now sits in  
8 a box on the floor next to Weitzel's FreeNAS server.

9 218. Weitzel reasonably relied on WDC's misrepresentations and omissions of  
10 material facts. If Weitzel had known that the WD Red NAS hard drive he purchased utilized  
11 recording technology which was inappropriate for its intended and advertised use, Weitzel  
12 would not have purchased the hard drive. Weitzel would have purchased a different CMR-  
13 technology hard drive (such as the IronWolf NAS 4TB drive he later purchased to replace it),  
14 which was truly appropriate for use in a FreeNAS server.

15 219. As a direct and proximate result of WDC's acts and omissions, Weitzel was  
16 harmed, suffered an injury-in-fact, and lost money or property.

17 220. Weitzel would purchase WD NAS hard drives again if he could have confidence  
18 regarding the truth of WDC's representations regarding the drives' appropriateness and fitness  
19 for NAS systems, RAID, and FreeNAS drive arrays.

20 221. Weitzel will be harmed if, in the future, he is left to guess as to whether WDC's  
21 representations are accurate and whether there are omissions of material facts regarding the  
22 features or specifications of WDC's NAS hard drives.

### 23 CLASS ACTION ALLEGATIONS

24 222. Plaintiffs Nicholas Malone, Chris Ayers, James Backus, David Eaton, Steven  
25 Gravel and Tod Weitzel (collectively, "Plaintiffs") hereby each brings this lawsuit on behalf of  
26 himself and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a),  
27 (b)(2), and (b)(3).

28 223. **The Class.** All Plaintiffs and/or Plaintiff Tod Weitzel seek to represent the

1 following nationwide Class under California law:

2 **All United States residents who, during the applicable**  
3 **limitations period, purchased any Western Digital WD Red**  
4 **NAS hard drive with SMR technology.**

5 224. Plaintiffs' and Mr. Weitzel's nationwide class presumes that California law can  
6 and will be applied to all of Defendant's acts and omissions alleged herein. Defendant is  
7 headquartered in California and is regulated by the UCL, FAL and CLRA. The acts and  
8 omissions of Defendant alleged herein were conceived in California, were approved in  
9 California, were executed in whole or in substantial part in California, and/or were, in the case  
10 of false or misleading communications or advertisements, communicated from California. The  
11 nationwide Class was harmed from California.

12 225. That being said, Plaintiffs acknowledge that a Court may disagree as to the  
13 application of California law to the entire nationwide Class and may limit each Plaintiff to  
14 representing a subclass of persons within his home state bringing claims under that state's  
15 consumer protection statute. While Plaintiffs intend to argue at all court levels that California  
16 law applies to the nationwide Class, Plaintiffs herein allege alternative state subclasses as per  
17 Plaintiffs' fiduciary duty to allege, protect and preserve as many viable claims as possible.

18 226. **California Subclass.** In the alternative, Plaintiff Tod Weitzel seeks to represent  
19 the following California subclass under California law:

20 **All California residents who, during the applicable**  
21 **limitations period, purchased any Western Digital WD Red**  
22 **NAS hard drive with SMR technology.**

23 227. **Florida Subclass.** In the alternative, Plaintiff Chris Ayers seeks to represent the  
24 following Florida subclass under Florida law:

25 **All Florida residents who, during the applicable limitations**  
26 **period, purchased any Western Digital WD Red NAS hard**  
27 **drive with SMR technology.**

28 228. **Missouri Subclass.** In the alternative, Plaintiff David Eaton seeks to represent  
the following Missouri subclass under Missouri law:

**All Missouri residents who, during the applicable limitations**  
**period, purchased any Western Digital WD Red NAS hard**  
**drive with SMR technology.**



1           229. **New York State Subclass.** In the alternative, Plaintiff Steven Gravel seeks to  
2 represent the following New York State subclass under New York State law:

3                   **All New York State residents who, during the applicable**  
4                   **limitations period, purchased any Western Digital WD Red**  
5                   **NAS hard drive with SMR technology.**

6           230. **Virginia Subclass.** In the alternative, Plaintiff James Backus seeks to represent  
7 the following Virginia subclass under Virginia law:

8                   **All Virginia residents who, during the applicable limitations**  
9                   **period, purchased any Western Digital WD Red NAS hard**  
10                   **drive with SMR technology.**

11           231. **Wisconsin Subclass.** In the alternative, Plaintiff Nicholas Malone seeks to  
12 represent the following Wisconsin subclass under Wisconsin law:

13                   **All Wisconsin residents who, during the applicable**  
14                   **limitations period, purchased any Western Digital WD Red**  
15                   **NAS hard drive with SMR technology.**

16           232. Specifically excluded from the Class and each and every subclass are Defendant,  
17 any entity in which a Defendant has a controlling interest or which has a controlling interest in  
18 Defendant, Defendant's agents and employees and attorneys, the bench officers to whom this  
19 civil action is assigned, and the members of each bench officer's staff and immediate family.

20           233. **Numerosity.** The Plaintiffs do not know the exact number of members of the  
21 Class and each subclass. That being said, Plaintiffs are informed and believe that the Class  
22 easily comprises tens of thousands of persons, while each subclass comprises one thousand or  
23 more individuals. In any event, the members of the Class and each subclass are so numerous  
24 that joinder of all members is impracticable.

25           234. **Commonality and Predominance.** Well-defined, identical legal or factual  
26 questions affect the members of the Class and each subclass. All claims in this matter arise  
27 from the identical written advertising and omissions of material facts regarding the WD Red  
28 NAS hard drives purchased by the members of the Class and each subclass. These questions  
predominate over questions that might affect individual class members. These common  
questions include, but are not limited to, the following:

1 a. Whether Defendant’s pattern, practice, course of dealing and/or course  
2 of trade was, prior to a date yet to be ascertained, to include CMR technology but not SMR  
3 technology in its WD Red NAS drives;

4 b. Whether Defendant omitted or failed to adequately disclose to the public  
5 that, after a date yet to be ascertained, Defendant’s WD Red NAS drives contained SMR  
6 technology and did not contain CMR technology;

7 c. Whether the ordinary consumer of Defendant’s WD Red NAS drives  
8 would consider the substitution of CMR technology for SMR technology to be material;

9 d. The date on which Defendant decided to substitute SMR technology for  
10 CMR technology in Defendant’s WD Red NAS drives;

11 e. The content of the emails, memoranda and other communications  
12 evidencing the decision to substitute SMR technology for CMR technology in Defendant’s WD  
13 Red NAS drives;

14 f. The content of the emails, memoranda and other communications  
15 evidencing the decision to omit or to fail to adequately disclose to the public the substitution of  
16 SMR technology for CMR technology in Defendant’s WD Red NAS drives;

17 g. The intent of Defendant and Defendant’s employees and agents in  
18 deciding to omit or to fail to adequately disclose to the public the substitution of SMR  
19 technology for CMR technology in Defendant’s WD Red NAS drives; and whether said intent  
20 was of malice, fraud or oppression;

21 h. Whether Defendant’s acts and omissions alleged herein violate  
22 California’s Consumers Legal Remedies Act, False Advertising Law and/or Unfair  
23 Competition Law;

24 i. Whether the Plaintiffs and the members of the Class or each subclass  
25 have suffered injury and have lost money or property as a result of Defendant’s acts and  
26 omissions alleged herein;

27 j. Whether Defendant should be ordered to disgorge its unjust enrichment;  
28

1 k. Whether Defendant should be enjoined from further engaging in the  
2 misconduct alleged herein; and/or

3 l. Whether Plaintiff and the Class are entitled to an order for class-wide  
4 injunctive relief, imposing equitable remedies such as restitution and/or requiring WDC to: (1)  
5 provide notice to every class member that the WD Red NAS hard drive they purchased is not  
6 suited for its intended purpose; and (2) either provide a full refund to Plaintiff and the Class for  
7 their WD Red NAS hard drives, or provide Plaintiff and the Class with replacement CMR-  
8 technology hard drives that are truly suited for use with NAS devices and RAID, at no  
9 additional cost.

10 235. The prosecution of separate civil actions by individual members of the Class and  
11 each or any subclass would create a risk of inconsistent or varying adjudications with respect to  
12 individual members of the Class or subclass which would establish incompatible standards of  
13 conduct for the party opposing the Class or subclass.

14 236. **Typicality.** Each Plaintiff is a member of the Class which that Plaintiff seeks to  
15 represent. Each Plaintiff representing a subclass is a member of that subclass. The claims of  
16 each Plaintiff are typical of all members of the Class and/or of the Plaintiff's subclass.

17 237. All of the claims alleged by each Plaintiff, on behalf of himself individually and  
18 on behalf of the Class, arise from the same misrepresentations and omissions of material fact.  
19 All of the claims alleged by each Plaintiff, on behalf of himself individually and on behalf of a  
20 subclass, arise from the same misrepresentations and omissions of material fact.

21 238. All of the claims alleged by each Plaintiff, on behalf of himself individually and  
22 on behalf of the Class, are based on the same legal theories. All of the claims alleged by each  
23 Plaintiff, on behalf of himself individually and on behalf of a subclass, are based on the same  
24 legal theories.

25 239. **Adequacy.** None of the Plaintiffs has an interest antagonistic to or in conflict  
26 with the Class. No Plaintiff has an interest antagonistic to or in conflict with that Plaintiff's  
27 respective subclass. Each Plaintiff will thoroughly and adequately protect the interests of the  
28 Class, having retained qualified and competent legal counsel to represent himself and the Class.

1 Each Plaintiff will thoroughly and adequately protect the interests of that Plaintiff's respective  
2 subclass, having retained qualified and competent legal counsel to represent himself and the  
3 subclass.

4 240. Further, a class action is superior to all other available methods for fairly and  
5 efficiently adjudicating this controversy. Each class and subclass member's interests are small  
6 compared to the burden and expense required to litigate each of their claims individually, so it  
7 would be impractical and would not make economic sense for class members to seek individual  
8 redress for Defendant's conduct. Individual litigation would add administrative burden on the  
9 courts, increasing the delay and expense to all parties and to the court system. Individual  
10 litigation would also create the potential for inconsistent or contradictory judgments regarding  
11 the same uniform conduct. A single adjudication would create economies of scale and  
12 comprehensive supervision by a single judge. Moreover, Plaintiffs do not anticipate any  
13 difficulties in managing a class action trial.

14 241. By its conduct and omissions alleged herein, Defendant has acted and refused to  
15 act on grounds that apply generally to the Class and each subclass, such that final injunctive  
16 relief and/or declaratory relief is appropriate with respect to the Class or subclasses as a whole.

17 242. The prosecution of separate actions by individual members of the Class or a  
18 subclass would create a risk of inconsistent or varying adjudications.

19 243. A class action is the only practical, available method for the fair and efficient  
20 adjudication of the controversy since, *inter alia*, the damages suffered by each class member  
21 are too small to make individual actions economically feasible.

22 244. Common questions will predominate, and there will be no unusual  
23 manageability issues.

**CAUSES OF ACTION**

**COUNT I**

**Violation of the Consumers Legal Remedies Act  
California Civil Code § 1750 *et seq.*  
(Individually and On Behalf Of The Class)**

245. Plaintiffs reallege and incorporate by reference all paragraphs previously alleged herein.

246. Each Plaintiff brings this claim in his individual capacity, in his capacity as a private attorney general seeking the imposition of public injunctive relief, and/or as a representative of the Class.

247. Defendant is a “person,” as defined by California Civil Code § 1761(c).

248. The Plaintiffs and class members are “consumers,” as defined by California Civil Code § 1761(d).

249. The WD Red NAS hard drives purchased by the Plaintiffs and the Class members are “goods” as defined by California Civil Code § 1761(a).

250. The purchases by the Plaintiffs and the class members constitute “transactions,” as defined by California Civil Code § 1761(e).

251. The unlawful methods, acts or practices alleged herein to have been undertaken by Defendant were all committed intentionally and knowingly. The unlawful methods, acts or practices alleged herein to have been undertaken by Defendant did not result from a *bona fide* error notwithstanding the use of reasonable procedures adopted to avoid such error.

252. With regard to this count of the pleading which alleges one or more violations of the CLRA, venue is proper in the state or federal court having jurisdiction over Santa Clara County, California (the county in which this action has been commenced) pursuant to Section 1780(d) of the California Civil Code because, without limitation, Santa Clara County is a county in which Defendant is doing business and is the county in which Defendant is headquartered. A declaration establishing that this Court has proper venue for this count is attached hereto as **Exhibit A**.

1           253. Defendant's methods, acts and/or practices, including Defendant's  
2 misrepresentations, omissions, active concealment, and/or failures to disclose, violated and  
3 continue to violate the CLRA in ways including, but not limited to, the following:

4           a. Defendant misrepresented that its products had characteristics, benefits,  
5 or uses that they did not have (Cal. Civ. Code § 1770(a)(5));

6           b. Defendant misrepresented that its products were of a particular standard,  
7 quality, grade, or of a particular style or model when the products were of another (Cal. Civ.  
8 Code § 1770(a)(7));

9           c. Defendant advertised its products with an intent not to sell them as  
10 advertised (Cal. Civ. Code § 1770(a)(9)); and

11           d. Defendant represented that its products were supplied in accordance with  
12 previous representations when they were not (Cal. Civ. Code § 1770(a)(16)).

13           254. Specifically, Defendant advertised and represented that these WD Red NAS  
14 hard drives were suitable for the particular purpose of NAS and RAID, when in fact the hard  
15 drives were not suitable for that purpose and were actually outright dangerous when used for  
16 that purpose.

17           255. With respect to omissions, Defendant at all relevant times had a duty to disclose  
18 the information in question because, *inter alia*: (a) Defendant had exclusive knowledge of  
19 material information that was not known to Plaintiffs and the Class; (b) Defendant concealed  
20 material information from Plaintiffs and the Class; and/or (c) Defendant made partial  
21 representations which were false and misleading absent the omitted information.

22           256. Defendant's misrepresentations and nondisclosures deceive and have a tendency  
23 and ability to deceive the general public.

24           257. Defendant's misrepresentations and nondisclosures are material, in that a  
25 reasonable person would attach importance to the information and would be induced to act on  
26 the information in making purchase decisions. Indeed, the utility and value of Defendant's WD  
27 Red NAS hard drives with SMR technology are significantly reduced, to the point of  
28

1 worthless, because these drives should not and cannot be used for their intended and  
2 advertised purpose of NAS or RAID.

3 258. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent  
4 conduct, Plaintiffs and the Class suffered injury-in-fact and lost money.

5 259. But for Defendant's deceptive conduct and omissions of material facts, Plaintiffs  
6 and the Class would not have purchased the subject hard drives and/or would have purchased  
7 an appropriate CMR-technology hard drive from one of Defendant's competitors instead.  
8 Defendant's conduct as alleged herein caused substantial injury to Plaintiffs, class members,  
9 and the public. Defendant's conduct is ongoing and will continue and recur absent a permanent  
10 injunction. Accordingly, Plaintiffs and the Class seek an order enjoining Defendant from  
11 committing such practices.

12 260. If not enjoined by order of this Court, Defendant is free to resume its unlawful  
13 behavior and injure Plaintiffs and consumers through the misconduct alleged herein once more.  
14 Defendant has a duty to speak truthfully or in a non-misleading manner.

15 261. Plaintiffs would purchase WD NAS hard drives again if they could have  
16 confidence regarding the truth of WDC's representations regarding their appropriateness and  
17 fitness for NAS systems and RAID.

18 262. Plaintiffs will be harmed if, in the future, they are left to guess as to whether  
19 WDC's representations are accurate and whether there are omissions of material facts regarding  
20 the features or specifications of WDC's NAS hard drives.

21 263. If Plaintiffs were to purchase a WD Red NAS hard drive again without WDC  
22 having changed its unlawful and deceptive conduct alleged herein, Plaintiffs would be harmed  
23 on an ongoing basis and/or would be harmed once or more in the future.

24 264. In order to prevent injury to the general public, Plaintiffs, in their individual  
25 capacities, seek a public injunction requiring WDC to stop advertising, and to instruct its  
26 resellers to stop advertising, any hard drives with SMR technology as being appropriate for  
27 NAS devices or RAID (including by removing "NAS" from such products' names).

28 265. The balance of the equities favors the entry of permanent injunctive relief

1 against Defendant. Plaintiffs and the general public will be irreparably harmed absent the entry  
2 of permanent injunctive relief against Defendant. Plaintiffs and the general public lack an  
3 adequate remedy at law. A permanent injunction against Defendant is in the public interest.  
4 Defendant's unlawful behavior is capable of repetition or re-occurrence absent the entry of a  
5 permanent injunction.

6 266. Plaintiffs do not currently seek damages in this First Amended Complaint under  
7 the CLRA.

8 267. In accordance with California Civil Code § 1782(a), Plaintiffs, through counsel,  
9 intend to promptly serve Defendant with notice of its CLRA violations by USPS certified mail,  
10 return receipt requested.

11 268. If Defendant fails to provide appropriate relief for its CLRA violations within 30  
12 days of its receipt of Plaintiffs' notification letter, Plaintiffs will seek leave to amend this  
13 complaint to pray for actual and/or punitive damages as permitted by Cal. Civ. Code §§ 1780  
14 and 1782(b), along with attorneys' fees and costs.

15 **COUNT II**

16 **Violation of California's False Advertising Law**  
17 **California Business and Professions Code § 17500 *et seq.***  
**(Individually and On Behalf Of The Class)**

18 269. Plaintiffs reallege and incorporate by reference all paragraphs previously alleged  
19 herein.

20 270. Each Plaintiff brings this claim in his individual capacity, in his capacity as a  
21 private attorney general seeking the imposition of public injunctive relief, and/or as a  
22 representative of the putative Class.

23 271. Defendant has engaged in false or misleading advertising in violation of  
24 California's statutory False Advertising Law ("FAL").

25 272. Defendant's conduct as described herein is misleading, and/or has a capacity,  
26 likelihood or tendency to deceive reasonable consumers.

27 273. Defendant, with intent directly or indirectly to dispose of personal property or to  
28 perform services, or to induce the public to enter into any obligation relating thereto, makes,



1 disseminates, has made or disseminated, causes to be made or disseminated, and/or has caused  
2 to be made or disseminated, before the public in California, in newspaper or other publication,  
3 or other advertising device, or by public outcry or by proclamation, or in any other manner or  
4 means, including over the internet, statements concerning that personal property or those  
5 services, and/or concerning any circumstance or matter of fact connected with the proposed  
6 performance or disposition thereof, which are untrue or misleading and which are known (or  
7 which by the exercise of reasonable care should be known) to be untrue or misleading.

8 274. Defendant made, disseminated, makes, disseminates, caused to be made or  
9 disseminated and/or causes to be made or disseminated any statements concerning the  
10 disposition of personal property or the performance of services, and/or concerning any  
11 circumstance or matter of fact connected with such statement as part of a plan or scheme with  
12 the intent not to sell that personal property or those services, professional or otherwise, as  
13 advertised.

14 275. With respect to omissions, Defendant at all relevant times had a duty to disclose  
15 the information in question because, *inter alia*: (a) Defendant had exclusive knowledge of  
16 material information that was not known to Plaintiffs and the Class; (b) Defendant concealed  
17 material information from Plaintiffs and the Class; and/or (c) Defendant made partial  
18 representations which were false and misleading absent the omitted information.

19 276. Defendant committed such violations of the False Advertising Law with actual  
20 knowledge that its advertising was misleading, or Defendant, in the exercise of reasonable care,  
21 should have known that its advertising was misleading.

22 277. Plaintiffs and the Class reasonably relied on Defendant's representations and/or  
23 omissions made in violation of the False Advertising Law.

24 278. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent  
25 conduct, Plaintiffs and each member of the Class suffered injury-in-fact and lost money.

26 279. But for Defendant's deceptive conduct and omissions of material facts, Plaintiffs  
27 and the Class would not have purchased the subject hard drives and/or would have purchased  
28 an appropriate hard drive from one of Defendant's competitors instead.

1 280. Defendant should be ordered to disgorge or make restitution of all monies  
2 improperly accepted, received, or retained.

3 281. Defendant's conduct has caused substantial injury to Plaintiffs, class members,  
4 and the public. Defendant's conduct is ongoing and will continue and recur absent a permanent  
5 injunction. Accordingly, Plaintiffs seek an order enjoining Defendant from committing such  
6 violations of the FAL. Plaintiffs further seek an order granting restitution to Plaintiffs and the  
7 Class in an amount to be proven at trial. Plaintiffs further seek an award of attorneys' fees and  
8 costs under Cal. Code Civ. Proc. § 1021.5.

9 282. Plaintiffs, on behalf of themselves and the Class, seek injunctive relief to require  
10 Defendant to: (1) provide notice to every class member that the WD Red NAS hard drive they  
11 purchased is not suited for its intended purpose; and (2) either provide a full refund to Plaintiffs  
12 and the Class for their WD Red NAS hard drives, or provide Plaintiffs and the Class with  
13 replacement CMR-technology hard drives that are truly suited for use with NAS devices and  
14 RAID, at no additional cost.

15 283. Absent injunctive relief, Defendant will continue to injure Plaintiffs and the  
16 class members. Even if such conduct were to cease, it is behavior that is capable of repetition or  
17 reoccurrence by Defendant.

18 284. In order to prevent injury to the general public, Plaintiffs, in their individual  
19 capacities, seek a public injunction requiring WDC to stop advertising, and to instruct its  
20 resellers to stop advertising, any hard drives with SMR technology as being appropriate for  
21 NAS devices or RAID (including by removing "NAS" from such products' names).

22 285. Plaintiffs and the general public lack an adequate remedy at law to remedy  
23 and/or mitigate the totality of the injuries and misconduct described herein.

24 **COUNT III**  
25 **Violation of California's Unfair Competition Law**  
26 **California Business and Professions Code § 17200 *et seq.***  
**(Individually and On Behalf Of The Class)**

27 286. Plaintiffs reallege and incorporate by reference all paragraphs previously alleged  
28 herein.

1           287. Each Plaintiff brings this claim in his individual capacity, in his capacity as a  
2 private attorney general seeking the imposition of public injunctive relief, and/or as a  
3 representative of a putative Class.

4           288. Defendant’s acts and omissions alleged herein constitute unfair competition  
5 and/or unlawful, unfair, or fraudulent business practices in violation of California Business and  
6 Professions Code § 17200 et seq. (the “Unfair Competition Law” or “UCL”).

7           289. Defendant’s conduct and omissions alleged herein are immoral, unethical,  
8 oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and the  
9 Class. There is no utility to Defendant’s conduct, and even if there were any utility, it would be  
10 significantly outweighed by the gravity of the harm to consumers caused by Defendant’s  
11 conduct alleged herein.

12           290. Defendant’s conduct and omissions alleged herein also violate California public  
13 policy, including as such policy is reflected in Cal. Civ. Code § 1750 et seq. and Cal. Civ. Code  
14 §§ 1709-1710.

15           291. By its conduct and omissions alleged herein, Defendant has violated the  
16 “unlawful” prong of the UCL, including by making material misrepresentations and omissions  
17 in violation of Cal. Bus. & Prof. Code § 17500 et seq. and Cal. Civ. Code § 1750, et seq.; and  
18 engaging in deceit and fraudulent concealment in violation of Cal Civ. Code §§ 1709-1710, et  
19 seq.

20           292. With respect to omissions, Defendant at all relevant times had a duty to disclose  
21 the information in question because, *inter alia*: (a) Defendant had exclusive knowledge of  
22 material information that was not known to Plaintiffs and the Class; (b) Defendant concealed  
23 material information from Plaintiffs and the Class; and/or (c) Defendant made partial  
24 representations which were false and misleading absent the omitted information.

25           293. Defendant’s material misrepresentations and nondisclosures were likely to  
26 mislead reasonable consumers, existing and potential customers, and the public.

27           294. Defendant’s nondisclosures and omissions of material facts deceive and have a  
28 tendency to deceive the general public and reasonable consumers, and therefore were unfair

1 and fraudulent.

2 295. Defendant's nondisclosures and omissions of material facts are material, such  
3 that a reasonable person would attach importance to the information and would be induced to  
4 act on the omissions in making purchase decisions.

5 296. Plaintiffs and members of the Class reasonably relied on Defendant's  
6 nondisclosures and omissions of material facts.

7 297. By its conduct and omissions alleged herein, Defendant received more money  
8 from Plaintiffs and the Class than it should have received, and that money is subject to  
9 restitution.

10 298. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent  
11 conduct, Plaintiffs and the Class suffered injury-in-fact and lost money.

12 299. But for Defendant's deceptive conduct and omissions of material facts, Plaintiffs  
13 and the Class would not have purchased the subject hard drives and/or would have purchased  
14 an appropriate hard drive from one of Defendant's competitors instead.

15 300. Each Plaintiff, on behalf of himself and the Class, seeks injunctive relief to  
16 require Defendant to: (1) provide notice to every class member that the WD Red NAS hard  
17 drive they purchased is not suited for its intended purpose; and (2) either provide a full refund  
18 to Plaintiffs and the Class for their WD Red NAS hard drives, or provide Plaintiffs and the  
19 Class with replacement CMR-technology hard drives that are truly suited for use with NAS  
20 devices and RAID, at no additional cost.

21 301. Defendant's conduct has caused substantial injury to Plaintiffs, class members,  
22 and the public. Defendant's conduct is ongoing and will continue and recur absent a permanent  
23 injunction. Accordingly, Plaintiffs seek an order enjoining Defendant from committing such  
24 unlawful, unfair, and fraudulent business practices. Plaintiffs further seek an order granting  
25 restitution to Plaintiffs and the Class in an amount to be proven at trial. Plaintiffs further seek  
26 an award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

27 302. Plaintiffs and the general public lack an adequate remedy at law to remedy  
28 and/or mitigate the totality of the injuries and misconduct described herein.

1 303. Absent injunctive relief, Defendant will continue to injure Plaintiffs and the  
2 class members. Defendant’s conduct and omissions of material fact are ongoing. And, even if  
3 such conduct were to cease, it is behavior that is capable of repetition or reoccurrence by  
4 Defendant.

5 304. In order to prevent injury to the general public, Plaintiffs, in their individual  
6 capacities, seek a public injunction requiring WDC to stop advertising, and to instruct its  
7 resellers to stop advertising, any hard drives with SMR technology as being appropriate for  
8 NAS devices or RAID (including by removing “NAS” from such products’ names).

9 **COUNT IV**  
10 **Violation of Relevant State’s Consumer Protection Statute**  
11 **(Individually and On Behalf Of A Subclass)**

12 305. Plaintiffs reallege and incorporate by reference Paragraphs 1 to 244, inclusive,  
13 alleged above.

14 306. Each Plaintiff brings this claim in the alternative to the prior claims alleged in  
15 this First Amended Complaint. Claims I to III above are based on the presumption that the  
16 Court will allow all Plaintiffs and the nationwide Class to bring claims against Defendant under  
17 California law. In the event that the Court does not so rule, each Plaintiff brings in the  
18 alternative this Claim IV and alleges that the law of each Plaintiff’s residence state applies to  
19 claims against Defendant brought by that Plaintiff and of a subclass composed of persons  
20 within the state.

21 307. Each subclass of persons within his home state bringing claims under that state’s  
22 consumer protection statute. While Plaintiffs intend to argue at all court levels that California  
23 law applies to the nationwide Class, Plaintiffs herein allege alternative state subclasses as per  
24 Plaintiffs’ fiduciary duty to allege, protect and preserve as many viable claims as possible.

25 308. **California Subclass.** In the alternative, Plaintiff Tod Weitzel seeks to represent  
26 the following California subclass under California law:

27 **All California residents who, during the applicable**  
28 **limitations period, purchased any Western Digital WD Red**  
**NAS hard drive with SMR technology.**

309. Plaintiff Tod Weitzel would bring his alternative claims under the California

1 Consumers Legal Remedies Act, the False Advertising Law and/or the Unfair Competition  
2 Law.

3 310. Plaintiff Tod Weitzel hereby re-alleges all of Claim I, Claim II and Claim II  
4 above, but limited to the California subclass.

5 311. **Florida Subclass.** In the alternative, Plaintiff Chris Ayers seeks to represent the  
6 following Florida subclass under Florida law:

7 **All Florida residents who, during the applicable limitations**  
8 **period, purchased any Western Digital WD Red NAS hard**  
9 **drive with SMR technology.**

10 312. Plaintiff Chris Ayers would bring his alternative claims under the Florida  
Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 through 501.213.

11 313. Plaintiff Chris Ayers is a “consumer” as defined by Florida Statutes §  
12 501.203(7). Defendant is engaged in “trade or commerce” as defined by Florida Statutes §  
13 501.203(8) when, without limitation, Defendant engages in advertising, soliciting, providing,  
14 offering or distributing, whether by sale or rental or otherwise, of any good or service—in this  
15 case, the advertising of Defendant’s WD Red NAS hard drives.

16 314. By engaging in the acts and omissions alleged above and incorporated herein,  
17 Defendant has engaged and continues to engage in unfair methods of competition,  
18 unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of a  
19 trade or commerce.

20 315. Defendant’s misconduct was likely to deceive a reasonable consumer, and, in  
21 deceiving Plaintiff Chris Ayers, did deceive a reasonable consumer. Furthermore, when  
22 purchasing a WD Red NAS drive, Mr. Ayers relied upon Defendant’s advertisements and/or  
23 prior course of conduct or dealing in presuming that a WD Red NAS drive would be  
24 compatible with NAS and RAID environments.

25 316. Defendant’s misconduct caused Plaintiff Chris Ayers and each member of the  
26 subclass to be injured. For example, and without limitation, Defendant’s false advertising  
27 caused Plaintiff Chris Ayers to purchase a WD Red NAS drive. If Defendant’s advertising had  
28 not been unfair, unconscionable or deceptive, Plaintiff Chris Ayers would not have purchased

1 that drive. He and each member of the subclass has been harmed by the amount paid out-of-  
2 pocket for the WD Red NAS drive; if he and other members of the class ultimately purchase  
3 another drive as a replacement, then the cost of that replacement should be added to the out-of-  
4 pocket harm. Mr. Ayers and the members of the subclass may therefore pray for an award of  
5 actual damages.

6 317. Mr. Ayers and the members of the subclass may also pray for the imposition of  
7 injunctive relief which limits and polices Defendant's advertisements within or reaching  
8 Florida. The balance of the equities favors the entry of permanent injunctive relief against  
9 Defendant. Plaintiff and the general public will be irreparably harmed absent the entry of  
10 permanent injunctive relief against Defendant. Plaintiff and the general public lack an adequate  
11 remedy at law. A permanent injunction against Defendant is in the public interest. Defendant's  
12 unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent  
13 injunction.

14 318. **Missouri Subclass.** In the alternative, Plaintiff David Eaton seeks to represent  
15 the following Missouri subclass under Missouri law:

16 **All Missouri residents who, during the applicable limitations**  
17 **period, purchased any Western Digital WD Red NAS hard**  
18 **drive with SMR technology.**

19 319. Plaintiff David Eaton would bring his alternative claims under the Missouri  
20 Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 through 407.307.

21 320. Defendant is a "person" pursuant to Mo. Rev. Stat. § 407.010(5). Defendant is  
22 engaged in "trade" or "commerce" pursuant to Mo. Rev. Stat. § 407.010(7) in that Defendant is  
23 engaged in the advertising, offering for sale, sale, or distribution, or any combination thereof,  
24 of any services and any property, tangible or intangible, real, personal, or mixed, and any other  
25 article, commodity, or thing of value wherever situated. The terms "trade" and "commerce"  
26 include any trade or commerce directly or indirectly affecting the people of the State of  
27 Missouri.

28 321. By engaging in the acts and omissions alleged above and incorporated herein,  
Defendant has engaged and continues to engage in the act, use or employment of deception,

1 fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment,  
2 suppression, or omission of any material fact in connection with the sale or advertisement of  
3 any merchandise in trade or commerce.

4 322. Plaintiff David Eaton purchased Defendant's merchandise in the State of  
5 Missouri. Mr. Eaton's purchase was for personal, family, or household purposes.

6 323. Defendant's misconduct caused Plaintiff David Eaton and the members of the  
7 subclass to suffer an ascertainable loss of money or property. For example, and without  
8 limitation, Defendant's false advertising caused Plaintiff David Eaton to purchase a WD Red  
9 NAS drive. If Defendant's advertising had not used or employed deception, fraud, false  
10 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or  
11 omission of any material fact, Plaintiff David Eaton would not have purchased that drive. He  
12 and the members of the subclass have been harmed by the ascertainable amount paid out-of-  
13 pocket for the WD Red NAS drive; if he and members of the subclass ultimately purchase  
14 another drive as a replacement, then the ascertainable cost of that replacement should be added  
15 to the out-of-pocket harm. His ascertainable loss and that of the subclass was a result of the acts  
16 and omissions of Defendant declared unlawful by Mo. Rev. Stat. § 407.020, and, as such, Mr.  
17 Eaton and each member of the subclass may pray for an award of his actual damages.

18 324. Defendant's conduct was egregious and demonstrated clear and disturbing  
19 disregard for Mr. Eaton's economic interests and the security of his data. As such, Mr. Eaton  
20 and each member of the subclass may pray for an award of punitive damages under Mo. Rev.  
21 Stat. § 407.025(1).

22 325. Mr. Eaton and the members of the subclass may also pray for the imposition of  
23 injunctive relief which limits and polices Defendant's advertisements within or reaching  
24 Missouri. The balance of the equities favors the entry of permanent injunctive relief against  
25 Defendant. Plaintiff and the general public will be irreparably harmed absent the entry of  
26 permanent injunctive relief against Defendant. Plaintiff and the general public lack an adequate  
27 remedy at law. A permanent injunction against Defendant is in the public interest. Defendant's  
28 unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent



1 injunction.

2 326. **New York State Subclass.** In the alternative, Plaintiff Steven Gravel seeks to  
3 represent the following New York State subclass under New York State law:

4 **All New York State residents who, during the applicable**  
5 **limitations period, purchased any Western Digital WD Red**  
6 **NAS hard drive with SMR technology.**

7 327. Plaintiff Steven Gravel would bring his alternative claims under the New York  
8 State Consumer Protection From Deceptive Acts And Practices Law (N.Y. Gen. Bus. Law §§  
9 349 to 350-F-1, inclusive).

10 328. By engaging in the acts and omissions alleged above and incorporated herein,  
11 Defendant has engaged and continues to engage in deceptive acts or practices in the conduct of  
12 any business, trade or commerce. In addition, by engaging in the acts and omissions alleged  
13 above and incorporated herein, Defendant has engaged and continues to engage in false  
14 advertising in that Defendant has engaged and continues to engage in advertising, including  
15 labeling, of a commodity when such advertising is misleading in a material respect.  
16 Defendant's acts and omissions are misleading not only in their statements, words, designs,  
17 devices, sounds or any combination thereof, but also the extent to which the advertising fails to  
18 reveal facts material in the light of such representations with respect to the commodity to which  
19 the advertising relates under the conditions prescribed in said advertisement, or under such  
20 conditions as are customary or usual. Defendant has engaged and continues to engage in  
21 consumer-oriented conduct that is materially misleading.

22 329. Defendant's misconduct caused Plaintiff Steven Gravel and the members of the  
23 subclass to suffer an actual injury. For example, and without limitation, Defendant's deceptive  
24 acts and/or false advertising caused Plaintiff Steven Gravel to purchase a WD Red NAS drive.  
25 If Defendant's acts had not been deceptive and/or Defendant's advertising had not been false,  
26 Plaintiff Steven Gravel would not have purchased that drive. He and the members of the  
27 subclass have been harmed by the actual amount paid out-of-pocket for the WD Red NAS  
28 drive; if he or other members of the subclass ultimately purchase another drive as a  
replacement, then the actual cost of that replacement should be added to the out-of-pocket

1 harm.

2 330. For each injury, Mr. Gravel and each member of the subclass may pray for an  
3 award of damages equal to fifty dollars or his actual damages, whichever is greater. N.Y. Gen.  
4 Bus. Law § 349(h). Because Defendant knowingly and willfully violated Section 349 and/or  
5 Section 350 of the New York State General Business Laws, Mr. Gravel and each member of  
6 the subclass may also pray for an award of treble damages.

7 331. Mr. Gravel and the members of the subclass may also pray for the imposition of  
8 injunctive relief which limits and polices Defendant’s advertisements within or reaching New  
9 York State. The balance of the equities favors the entry of permanent injunctive relief against  
10 Defendant. Plaintiff and the general public will be irreparably harmed absent the entry of  
11 permanent injunctive relief against Defendant. Plaintiff and the general public lack an adequate  
12 remedy at law. A permanent injunction against Defendant is in the public interest. Defendant’s  
13 unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent  
14 injunction.

15 332. **Virginia Subclass.** In the alternative, Plaintiff James Backus seeks to represent  
16 the following Virginia subclass under Virginia law:

17 **All Virginia residents who, during the applicable limitations**  
18 **period, purchased any Western Digital WD Red NAS hard**  
19 **drive with SMR technology.**

20 333. Plaintiff James Backus would bring his alternative claims under the Virginia  
21 Consumer Protection Act of 1977, as amended, Va. Code Ann. §§ 59.1-196 through 59.1-207.

22 334. Pursuant to the definitions codified at Va. Code Ann. § 59.1-198: The WD Red  
23 NAS drive is a “good” in that it constitutes tangible personal property. Defendant is the WD  
24 Red NAS drive’s “supplier” in that Defendant is a seller, lessor or licensor who advertises,  
25 solicits, or engages in consumer transactions and/or a manufacturer, distributor or licensor who  
26 advertises and sells, leases or licenses goods or services to be resold, leased, or sublicensed by  
27 other persons in consumer transactions. Plaintiff James Backus’ purchase of the WD Red NAS  
28 hard drive was a “consumer transaction” in that the WD Red NAS drive was to be used  
primarily for personal, family or household purposes.

1           335. By engaging in the acts and omissions alleged above and incorporated herein,  
2 Defendant has engaged and continues to engage in unlawful fraudulent acts or practices.  
3 Specifically, Defendant has and continues to: misrepresent that the WD Red NAS drives have  
4 certain quantities, characteristics, uses, or benefits when they do not; misrepresent that the WD  
5 Red NAS drives are of a particular standard, quality, grade, style or model; advertise or offer  
6 for sale WD Red NAS drives that are defective or that are imperfect or “not first class” without  
7 clearly and unequivocally indicating in the advertisement or offer for sale that the goods are  
8 defective, imperfect or “not first class”; advertise goods with intent not to sell them as  
9 advertised, or with intent not to sell at the terms advertised; and/or use any other deception,  
10 fraud, false pretense, false promise, or misrepresentation in connection with a consumer  
11 transaction.

12           336. As alleged above and incorporated herein, Defendant’s advertisements and  
13 promotional materials contain affirmative misrepresentations of fact. Most obviously, the drive  
14 is named the “**WD Red NAS**” drive, but it is not compatible with or appropriate to use in a  
15 NAS environment. Other misrepresentations include: “**Built for NAS compatibility,**”  
16 “**Designed for RAID environments,**” “**specifically designed for use in NAS systems with up**  
17 **to 8 bays**” and appropriate for “**small and home office NAS systems in a 24x7 environment.**”

18           337. In addition, Defendant’s advertisements and promotional materials violate the  
19 Virginia Consumer Protection Act because of their nondisclosure of a material facts—that the  
20 drives contained inferior and inappropriate SMR technology instead of the traditional CMR  
21 technology. Defendant’s decision to omit public announcement of its switch to inferior SMR  
22 technology was part of a knowing and deliberate decision not to disclose the fact. Discovery  
23 will reveal that Defendant and its officers and employees knowingly made the switch in  
24 technology and knowingly decided not to inform consumers of the switch.

25           338. Plaintiff James Backus reasonably relied upon Defendant’s affirmative  
26 statements and upon Defendant’s silence regarding any change in technology when Mr. Backus  
27 purchased a WD Red NAS drive.

28           339. Defendant’s misconduct caused Plaintiff James Backus and the members of the

1 subclass to suffer an actual loss. For example, and without limitation, Defendant's deceptive  
2 acts and/or false advertising caused Plaintiff James Backus to purchase a WD Red NAS drive.  
3 If Defendant's acts, statements and omissions had complied with the requirements of Virginia  
4 law, Plaintiff James Backus would not have purchased that drive. He and the members of the  
5 subclass have been harmed by the actual amount paid out-of-pocket for the WD Red Drive; if  
6 he or members of the subclass ultimately purchase another drive as a replacement, then the  
7 actual cost of that replacement should be added to the out-of-pocket harm.

8 340. For each loss, Mr. Backus and each member of the subclass may pray for an  
9 award of damages equal to five hundred dollars or his actual damages, whichever is greater.  
10 Va. Code Ann. §§ 59.1-204(A). Because Defendant acted willfully, Mr. Backus and each  
11 member of the subclass may also pray for an award of treble damages.

12 341. Mr. Backus and the members of the subclass may also pray for the imposition of  
13 injunctive relief which limits and polices Defendant's advertisements within or reaching  
14 Virginia. The balance of the equities favors the entry of permanent injunctive relief against  
15 Defendant. Plaintiff and the general public will be irreparably harmed absent the entry of  
16 permanent injunctive relief against Defendant. Plaintiff and the general public lack an adequate  
17 remedy at law. A permanent injunction against Defendant is in the public interest. Defendant's  
18 unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent  
19 injunction.

20 342. **Wisconsin Subclass.** In the alternative, Plaintiff Nicholas Malone seeks to  
21 represent the following Wisconsin subclass under Wisconsin law:

22 **All Wisconsin residents who, during the applicable**  
23 **limitations period, purchased any Western Digital WD Red**  
24 **NAS hard drive with SMR technology.**

25 343. Plaintiff Nicholas Malone would bring his alternative claim under Wis. Stat. §§  
26 100.18 and 100.20.

27 344. By engaging in the acts and omissions alleged above and incorporated herein,  
28 Defendant (person, firm and/or corporation) has, with intent to sell, distribute, increase the  
consumption of or in any wise dispose of merchandise or anything offered by Defendant,

1 directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to  
2 induce the public in any manner to enter into any contract or obligation relating to the purchase,  
3 sale, hire, use or lease of the merchandise has and continues to make, publish, disseminate,  
4 circulate, or place before the public, or cause, directly or indirectly, to be made, published,  
5 disseminated, circulated, or placed before the public, in Wisconsin, in a newspaper, magazine  
6 or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet,  
7 letter, sign, placard, card, label, or over any radio or television station, or in any other way  
8 similar or dissimilar to the foregoing, an advertisement, announcement, statement or  
9 representation of any kind to the public relating to such purchase, sale, hire, use or lease of such  
10 merchandise or to the terms or conditions thereof, which advertisement, announcement,  
11 statement or representation contains any assertion, representation or statement of fact which is  
12 untrue, deceptive or misleading.

13 345. Moreover and separately, by engaging in the acts and omissions alleged above  
14 and incorporated herein, Defendant has continued to make, publish, disseminate, circulate or  
15 place before the public in Wisconsin in a newspaper or other publication or in the form of book,  
16 notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label or over any  
17 radio or television station or in any other way similar or dissimilar to the foregoing, an  
18 advertisement, announcement, statement or representation of any kind to the public relating to  
19 the purchase, sale, hire, use or lease of merchandise or to the terms or conditions thereof which  
20 advertisement, announcement, statement or representation is part of a plan or scheme the  
21 purpose or effect of which is not to sell, purchase, hire, use or lease the merchandise as  
22 advertised.

23 346. Specifically, Defendant advertised the WD Red NAS drives, the advertising was  
24 misleading, and Mr. Malone purchased the WD Red NAS drive and thereby suffered pecuniary  
25 harm. The false advertising materially induced Mr. Malone to purchase the WD Red NAS  
26 drive.

27 347. Defendant's misconduct caused Plaintiff Nicholas Malone and the members of  
28 the subclass to suffer a pecuniary loss. For example, and without limitation, Defendant's

1 deceptive acts and/or false advertising were a material inducement to Plaintiff Nicholas  
2 Malone’s purchase of a WD Red NAS drive. If Defendant’s acts, statements and omissions had  
3 complied with the requirements of Wisconsin law, Plaintiff Nicholas Malone would not have  
4 purchased that drive. He and the members of the subclass have been harmed by the actual  
5 amount paid out-of-pocket for the WD Red NAS hard drive; if he or members of the subclass  
6 ultimately purchase another drive as a replacement, then the actual cost of that replacement  
7 should be added to the out-of-pocket harm.

8 348. For each loss, Mr. Malone and each member of the subclass may pray for an  
9 award of pecuniary damages.

10 349. Mr. Malone and the members of the subclass may also pray for the imposition of  
11 injunctive relief which limits and polices Defendant’s advertisements within or reaching  
12 Wisconsin. The balance of the equities favors the entry of permanent injunctive relief against  
13 Defendant. Plaintiff and the general public will be irreparably harmed absent the entry of  
14 permanent injunctive relief against Defendant. Plaintiff and the general public lack an adequate  
15 remedy at law. A permanent injunction against Defendant is in the public interest. Defendant’s  
16 unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent  
17 injunction.

18 **PRAYER FOR RELIEF**

19 1. In order to prevent injury to the general public, Plaintiffs Nicholas Malone,  
20 Chris Ayers, James Backus, David Eaton, Steven Gravel and Tod Weitzel (collectively,  
21 “Plaintiffs”), in each’s individual capacity, request that the Court enter a public injunction  
22 requiring Defendant Western Digital Corporation to stop advertising, and to instruct its  
23 resellers to stop advertising, any hard drives with SMR technology as being appropriate for  
24 NAS devices or RAID (including by removing “NAS” from such products’ names).

25 2. Further, on behalf of themselves and the proposed Class, Plaintiffs request that  
26 the Court order relief and enter judgment against Western Digital Corporation as follows:

27 a. Declare this action to be a proper class action, certifying the Class  
28 defined herein, and appoint Plaintiffs and their counsel to represent the Class;

1           b.       Declare Defendant’s conduct to be in violation of applicable law;

2           c.       Order disgorgement or restitution, including, without limitation,  
3 disgorgement of all revenues, profits and/or unjust enrichment that Defendant obtained, directly  
4 or indirectly, from Plaintiffs and the members of the Class or otherwise as a result of the  
5 unlawful conduct alleged herein;

6           d.       Permanently enjoin Defendant from the unlawful conduct alleged herein;

7           e.       Retain jurisdiction to police Defendant’s compliance with the permanent  
8 injunctive relief;

9           f.       Order Defendant to: (1) provide notice to every class member that the  
10 WD Red NAS hard drive they purchased is not suited for its intended purpose; and (2) either  
11 provide a full refund to Plaintiffs and the Class for their WD Red NAS hard drives, or provide  
12 Plaintiffs and the Class with replacement CMR-technology hard drives that are truly suited for  
13 use with NAS devices and RAID, at no additional cost;

14           g.       Order Defendant to pay attorneys’ fees, costs, and pre-judgment and  
15 post-judgment interest to the extent allowed by law; and

16           h.       Provide all other relief to which Plaintiffs and the Class may show  
17 themselves justly entitled.

18           3.       In the alternative, each Plaintiff requests all of the above but limited to each  
19 state subclass represented by each Plaintiff; plus each Plaintiff for each state subclass—with the  
20 exception of Tod Weitzel for the California subclass—also requests damages in an amount to  
21 be proven at trial plus punitive and exemplary damages to the extent allowed by law.

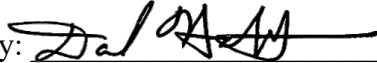
**JURY DEMAND**

Plaintiffs Nicholas Malone, Chris Ayers, James Backus, David Eaton, Steven Gravel and Tod Weitzel, each on behalf of himself and on behalf of the Class (and, in the alternative, on behalf of each state subclass), demands a trial by jury on all issues so triable.

DATED this 16<sup>th</sup> day of June, 2020.

Presented by:

HATTIS & LUKACS

By: 

Daniel M. Hattis (SBN 232141)

Paul Karl Lukacs (SBN 197007)

HATTIS & LUKACS

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*Attorneys for Plaintiffs and the Proposed Class*



# EXHIBIT A

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Email: dan@hattislaw.com  
5 Email: pkl@hattislaw.com

6 *Attorneys for Plaintiffs and the Proposed Class*

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 NICHOLAS MALONE,  
CHRIS AYERS,  
11 JAMES BACKUS,  
DAVID EATON,  
12 STEVEN GRAVEL, and  
TOD WEITZEL,  
13 for Themselves, as Private Attorneys  
General, and/or On Behalf Of All  
14 Others Similarly Situated,

15 Plaintiffs,

16 v.

17 WESTERN DIGITAL CORPORATION,

18 Defendant.

Case No. 5:20-cv-03584-NC

**DECLARATION OF  
DANIEL M. HATTIS  
PURSUANT TO THE CALIFORNIA  
CONSUMERS LEGAL REMEDIES ACT  
(CAL. CIVIL CODE § 1780(D))**

19  
20 I, DANIEL M. HATTIS, hereby declare and state as follows:

21 1. I am over the age of 18 years, I am a member in good standing of the State Bar  
22 of California, and I am an attorney of record in this civil action, in which I am representing  
23 Plaintiffs Nicholas Malone, Chris Ayers, James Backus, David Eaton, Steven Gravel, and Tod  
24 Weitzel. The facts contained herein are based on my personal knowledge except as to facts  
25 stated upon information and belief and, as to those, I believe it to be true.

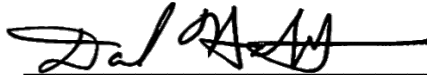
26 2. This civil action pleads a cause of action for violation of the California  
27 Consumers Legal Remedies Act (“CLRA”) against Defendant Western Digital Corporation  
28 (“WDC” or “Defendant”). This civil action has been commenced in a county described in

1 Section 1780(d) of the California Civil Code as a proper place for the trial of the action.

2 3. This action is being commenced in Santa Clara County, California, because that  
3 is the county in which Defendant has its principal place of business. WDC's headquarters are  
4 located at 5601 Great Oaks Parkway, San Jose, California 95119.

5 I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct.

7  
8 Executed on June 16, 2020, in King County, State of Washington.

9  
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11 DANIEL M. HATTIS  
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