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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 NICHOLAS MALONE,
for Himself, as a Private Attorney
11 General, and/or On Behalf Of All
Others Similarly Situated,
12
Plaintiff,
13
v.
14 WESTERN DIGITAL CORPORATION,
15
Defendant.
16

Case No. 5:20-cv-03584

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**

JURY TRIAL DEMANDED

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20 Plaintiff Nicholas Malone, individually, as a private attorney general, and/or on behalf
21 of all others similarly situated, alleges as follows, on personal knowledge and investigation of
22 his counsel, against Defendant Western Digital Corporation (“WDC” or “Defendant”):
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INTRODUCTION AND SUMMARY

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2 1. This case is brought against Western Digital Corporation (“WDC” or “Western
3 Digital”) on behalf of all United States residents who purchased certain hard drives which were
4 branded “WD Red NAS” and were explicitly advertised and represented to be designed for and
5 suitable for use in NAS (network attached storage) devices, but which in fact are not suitable
6 for that intended use and which put customer data at greater risk of data loss or destruction due
7 to the use of inferior hard drive technology which is not appropriate or compatible with usage
8 in NAS devices. The inferior (and cheaper) hard drive technology utilized by WDC in the hard
9 drives is called “SMR” (Shingled Magnetic Recording). WDC surreptitiously sneaked—
10 without any disclosure whatsoever—this SMR technology into its WD Red NAS hard drives
11 within the past year or so in an effort to shave costs while keeping the selling price the same.

12 2. This inferior SMR technology replaced the more-expensive-to-produce but
13 industry-standard “CMR” (Conventional Magnetic Recording) technology which WDC had
14 previously used—for nearly a decade—in these very same “WD Red NAS” branded hard
15 drives. Industry experts agree and have gone on the record (including WDC’s competitor
16 Seagate Technology) that this SMR technology is completely inappropriate, and even
17 dangerous, for NAS or RAID usage, and should never be used in such an application. (NAS,
18 RAID, and other technical terms in this introduction are fully explained in the body, *infra.*)

19 3. Yet, even after WDC was caught perpetrating this scheme in April 2020 (after
20 initially denying the hard drives utilized SMR technology, but then finally admitting it), WDC
21 has continued to falsely advertise that these SMR-technology WD Red NAS hard drives are
22 “purpose-built” for NAS and RAID to “help preserve your data.”

23 4. As a result of WDC’s fraud and deception, thousands of customers nationwide
24 who purchased the WD Red NAS hard drives for their advertised and intended use have been
25 duped, and have suffered harm and damages. These WD Red NAS hard drives with the inferior
26 SMR technology are potential ticking time bombs that risk the destruction of customer data and
27 files at any moment, because the data recovery and redundancy features of the NAS device may
28 fail during the RAID rebuilding process (also called “resilvering”) as the SMR hard drives

1 cannot handle the continuous sustained writes and heavy random writes which necessarily then
2 occur. (The term “writes” as used in this Complaint includes writes and re-writes of data.)
3 Customers are also often unable to expand their NAS storage capacity by adding more hard
4 drives, which requires a similar resilvering process as the data is redistributed and rewritten
5 across all the hard drives. In fact, the SMR hard drives are simply unable to handle continuous
6 sustained random writes (which often occurs in normal NAS usage) without freezing up and
7 reporting “timeouts” to the NAS device, causing poor performance. The WD Red NAS drives
8 may also fail to adequately function while performing standard and expected RAID
9 “scrubbing,” which is a recommended periodic data integrity check where all the data on the
10 hard drive is checked for errors and consistency and automatically corrected. Ultimately, the
11 WD Red NAS devices are wholly inappropriate for their intended and advertised use (which
12 WDC even put in the product’s name: WD Red “NAS”). The hard drives are **completely**
13 **worthless** for their intended purpose—and are in fact dangerous to customer data.

14 5. Plaintiff Nicholas Malone brings this action individually on his own behalf as a
15 deceived Western Digital customer and as a private attorney general seeking an order for public
16 injunctive relief to protect the general public, directing that WDC stop advertising, and to
17 instruct its resellers to stop advertising, any hard drives with SMR technology as being
18 appropriate for NAS devices or RAID (including by removing “NAS” from such products’
19 names).

20 6. Plaintiff also brings this action as a representative plaintiff on behalf of a
21 nationwide class of consumers who purchased WD Red NAS hard drives utilizing SMR
22 technology, seeking, among other things, that Defendant be ordered to disgorge all revenues
23 Defendant has unjustly received from the members of the class. Plaintiff also seeks an order
24 requiring Defendant to: (1) provide notice to every class member that the WD Red NAS hard
25 drive they purchased is not suited for its intended purpose; and (2) either provide a full refund
26 to Plaintiff and class members for their WD Red NAS hard drives, or provide Plaintiff and
27 class members with replacement CMR-technology hard drives that are truly suited for use with
28 NAS devices and RAID, at no additional cost.

1 7. Plaintiff brings these claims under California statutory authority and principles
2 of equity including the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*;
3 the False Advertising Law, California Business & Professions Code § 17500 *et seq.*; and the
4 Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*

5 **THE PARTIES**

6 8. Plaintiff Nicholas Malone is a citizen of the United States of America and
7 Wisconsin and is an individual and a natural adult person who resides in Madison, Wisconsin.

8 9. Like all members of the proposed class, Plaintiff Malone purchased a WD Red
9 NAS Drive that utilized SMR technology. Specifically, Plaintiff Malone purchased on
10 Amazon.com, four (4) “WD Red 6TB NAS Hard Drives – 5400 RPM Class, SATA 6 GB/s,
11 256 MB Cache, 3.5” – Model Number: WD60EFAX” for \$150.12 each on March 6, 2020.

12 10. Defendant Western Digital Corporation is a Delaware corporation with its
13 principal place of business and/or nerve center located at 5601 Great Oaks Parkway, San Jose,
14 California 95119.

15 **JURISDICTION AND VENUE**

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

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

28 13. **Venue.** Venue is proper in the Northern District of California because, pursuant

1 to 28 U.S.C. § 1391(b)(1), this judicial district is a judicial district in which Defendant WDC
2 resides, and pursuant to 28 U.S.C. § 1391(c)(2), for venue purposes WDC shall be deemed to
3 reside in this judicial district because WDC is subject to the court's personal jurisdiction with
4 respect to this civil action.

5 FACTUAL ALLEGATIONS

6 14. Western Digital ("WDC") is one of the largest manufacturers of hard drives in
7 the world. Western Digital manufactures two different types of hard drives: traditional large-
8 capacity spinning disk mechanical hard drives, and more modern but smaller-capacity solid-
9 state flash storage drives (often also called hard drives) which have no moving parts. This
10 Complaint concerns the traditional large capacity spinning disk mechanical hard drives, and
11 any reference to "hard drives" herein means traditional spinning disk mechanical hard drives.

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

19 16. In 2012, WDC released its WD Red series NAS hard drives, which were
20 specifically designed for NAS (network-attached storage) systems and for RAID (Redundant
21 Array of Independent Disks) environments. A NAS device is a stand-alone computing device
22 which typically contains multiple individual hard drives that are grouped together to form one
23 large datastore, which is used to store files and share them with other computers or laptops over
24 a network. RAID is a technology, typically utilized in NAS devices, of combining multiple
25 hard drives into a single logical datastore or virtual drive for data redundancy, data security,
26 and performance purposes. NAS devices which contain four or more hard disks typically (and
27 often automatically) format the drives in a "disk striping" format such as RAID 5 or RAID 6 or
28 ZFS software or hardware RAID, which builds in redundancy such that one or multiple drives

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