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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Tim Pozar and Scott Nalick, Individually and
on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

Seagate Technology LLC and Does 1-50,

Defendants.

Case No. CGC-15-547787

Amended Complaint for Violation of:

Cal. Civ. Code §§ 1790 *et seq.*

Cal. Civ. Code §§ 1750 *et seq.*

Cal. Bus. & Prof. Code §§ 17500 *et seq.*

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

Class Action

Demand for Jury Trial

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Upon personal knowledge as to their own acts and status, and based upon their investigation, their counsel's investigation, and information and belief as to all other matters, plaintiffs Tim Pozar and Scott Nalick (together, "Plaintiffs"), on behalf of themselves and all others similarly situated, allege:

SUMMARY OF ACTION

1. This is a class action brought on behalf of purchasers of Seagate Technology LLP's ("Seagate") three-terabyte ("3 TB") client hard disk drives ("HDDs," "hard drives," or "drives"), which contain a latent defect that causes the drives to fail at an extraordinarily high rate, resulting in severe data loss.

2. Each Plaintiff purchased one or more Seagate 3 TB HDDs for his own personal use within the last three years. Each Plaintiff's HDD experienced a data failure that occurred outside of Seagate's one-year warranty period.

3. Plaintiffs' hard-drive failures are not an isolated case. According to one recent large-scale study of over 4,000 Seagate 3 TB client HDDs, *a staggering 78% of the drives suffered a data failure after only two to three years of use*, reflecting a widespread pattern of failures with this particular model. In contrast, the study found that comparable client HDDs failed at a rate of 5% or less during the same timespan.

4. Despite this widespread defect, Seagate has not announced any recall of the affected HDD models or otherwise offered to repair or replace the affected HDDs. Instead, consumers complaining of data loss outside of Seagate's one-year warranty period have been told by the Company that they should pay *additional* money to Seagate to attempt to recover lost data.

5. By shipping hard drives with a latent defect, Seagate sold consumer goods that were substantially below the quality generally available in the market, were not fit for the consumer data storage for which they were generally used, and were not adequately packaged and labeled. Seagate, therefore, has breached its implied warranty of merchantability in violation of the California Song-Beverly Consumer Warranty Act, CAL. CIV. CODE §§ 1790 *et seq.* As a result,

all purchasers of Seagate 3 TB HDDs that contained the latent defect are entitled to recover monetary damages for the full purchase price of their drives.

6. Seagate also concealed the problem with its 3 TB client HDDs through its marketing, advertising, and packaging. While Seagate touted the drives’ “trusted performance, reliability, simplicity and capacity” and “proven quality and performance,” it failed to disclose that nearly 80% of the drives fail within two to three years of purchase, resulting in severe—and sometimes catastrophic—data loss. Seagate’s misrepresentations and omissions violate the California Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE §§ 1750 *et seq.*, and the California False Advertising Law (“FAL”), CAL. BUS. & PROF. CODE §§ 17500 *et seq.* Seagate’s conduct is also unlawful, fraudulent, and unfair in violation of the California Unfair Competition Law (“UCL”), CAL. BUS. & PROF. §§ 17200 *et seq.*

PARTIES

7. Plaintiff Tim Pozar (“Pozar”) is a citizen of California and a resident of Mill Valley, California. During the Class Period, as defined *infra*, Pozar purchased multiple Seagate Barracuda internal HDDs with a three-terabyte capacity for his own personal use from a retail store in San Francisco, California.

8. Plaintiff Scott Nalick (“Nalick”) is a citizen of California and a resident of Livermore, California. During the Class Period, as defined *infra*, Nalick purchased a Seagate Backup Plus external HDD with a three-terabyte capacity for his own personal use from a retail store in Dublin, California.

9. Defendant Seagate Technology LLC (“Seagate,” the “Company,” or “Defendant”) is a Delaware corporation with its principal place of business in Cupertino, California. Seagate maintains extensive contacts within the State of California. Defendant maintains its principal headquarters in California, sells hard disk drives and other hardware and software products to California residents, and markets and advertises its products in California.

10. Defendants Does 1 through 50 are presently unknown to Plaintiffs. Pursuant with CAL. CIV. PROC. CODE § 474, Plaintiffs are unaware of the true names and capacities of these defendants and therefore, bring suit against these defendants under fictitious names. Plaintiffs will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some capacity for the the conduct alleged and wrongs described herein.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to CAL. CIV. PROC. CODE § 410.10 because Defendant has sufficient minimum contacts with California and/or Defendant otherwise purposely avails itself of the markets in California. The acts at issue in this complaint occurred in California, Plaintiffs are citizens of California, and Defendant conducts substantial business, including the promotion, marketing, and sale of its products in California and is headquartered in California. These acts render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

12. Venue is proper in the City and County of San Francisco pursuant to CAL. CIV. PROC. CODE § 1780(d) because the transaction or a substantial portion thereof occurred in the City and County of San Francisco. Venue is also proper pursuant to CAL. CIV. PROC. CODE § 395.5 because the contract was made and the obligation and liability arose in the City and County of San Francisco.

FACTUAL ALLEGATIONS

The Consumer Hard Disk Drive Market

13. Seagate claims to be a leading provider of electronic data storage technology and solutions. Seagate's principal products are hard disk drives. HDDs are devices that store digitally encoded data on rapidly rotating disks with magnetic surfaces. HDDs are the primary medium of mass data storage.

1 14. HDDs include a head disk assembly and a printed circuit board mounted to the
2 assembly, which are sealed inside a rigid base and top cover containing the recording components.
3 The head disk assembly consists of one or more disks attached to a spindle assembly powered by a
4 motor that rotates the disks at a high constant speed around a hub. The read/write heads scan
5 across the disk as it spins, magnetically recording or reading information to the disk. The disks are
6 made from materials such as aluminum or glass, which are coated with thin layers of magnetic
7 material.



23 15. The read/write heads are mounted to an arm assembly, similar in concept to that
24 of a record player. The read/write heads fly extremely close to the disk surface, recording and
25 retrieving data from concentric tracks in the magnetic layers of the rotating disk. The tolerances
26 of the recording heads are extraordinarily demanding and require state-of-the-art equipment and
27 processes.



16. The printed circuit board assemblies (“PCBAs”) are comprised of application-specific integrated circuits (“ASICs”) and ancillary electronic control chips. The ASICs control the movement of data to and from the read/write heads and through the internal controller and interfaces, which communicate with the host computer. The ASICs and control chips form electronic circuitry that delivers instructions to a head positioning mechanism called an actuator to guide the heads to the selected track where the data is recorded or retrieved. HDD manufacturers then use industry-standard interfaces (e.g., serial advanced technology architecture (“SATA”), universal serial bus (“USB”), and others) to communicate with the host computer.

17. In 2014, HDD manufacturers shipped approximately 564 million units worldwide, according to drive manufacturers and independent analysts. Western Digital Corporation (“Western Digital”) and Seagate are the largest manufacturers with 43% and 41% of the global HDD market in 2014, respectively. Toshiba Corporation is a distant third with 16% of the market.

1 18. The HDD market is generally divided into two principal segments: enterprise
2 storage and client storage. Enterprise HDDs typically feature increased speed, improved energy
3 efficiency, and larger capacities. Client HDDs are designed for personal computers and
4 workstations and ship in both desktop and notebook configurations.

5 19. In 2014, Seagate shipped 146 million client HDDs worldwide. These shipments
6 included 72.9 million HDDs for desktop computers and 73.1 million HDDs for notebook
7 computers. These sales also include both standalone external drives designed to be plugged into a
8 computer and internal drives that users install inside their desktop or notebook machines.

9 20. Seagate designs and produces its own read/write heads and recording media,
10 which are critical components, and the Company performs all stages of the design and
11 manufacture of the read/write heads at the Company's own facilities. Seagate participates in the
12 proprietary design of its ASICs but outsources their manufacture and assembly to third parties.

13 **Seagate Markets and Advertises Its Barracuda and Backup Plus**
14 **HDDs as Having "Trusted Reliability" and "Proven Quality"**

15 21. During the Class Period, Seagate marketed and sold two primary client HDDs for
16 desktop computers: the Seagate Barracuda Desktop Hard Drive ("Barracuda"), which was
17 designed to be installed internally in a computer, and the Seagate Backup Plus Desktop Drive
18 ("Backup Plus"), which is a peripheral that connects externally to a computer.

19 22. During the Class Period, Seagate's Barracuda internal HDDs and Backup Plus
20 external HDDs were functionally identical. In fact, when some customers shucked Backup Plus
21 HDDs—a process by which the external casing is removed to reveal the internal drive—they
22 found that the Backup Plus drives bore the same model number as the Barracuda.

23 23. Seagate prominently marketed and advertised its Barracuda HDDs as "One drive
24 with trusted performance, reliability, simplicity and capacity." On its website describing the
25 Barracuda's features, Seagate highlighted the drives's "Proven quality and performance" and
26 explained that "Barracuda has become the world's most popular family of hard drives with
27 consistent quality and performance-enhancing innovations."

1 24. Seagate further claimed that the Barracuda included “Seagate AcuTrac™
2 technology” that “enables reliable read/write performance even in high touch operating
3 environments.”

4 25. Seagate likewise made similar claims of superior reliability with regard to tis
5 Backup Plus HDDs. It marketed the Backup Plus under the slogan, “Your digital life safe and
6 sound” and claimed that the “Backup Plus from Seagate is the simple, one-click way to protect
7 and share your entire digital life.” These statements were designed to assure consumers that the
8 Company’s Backup Plus Drives were reliable enough for backing up important files.

9 26. On its website describing the Backup Plus’s features, Seagate touted the drive for
10 use to “Protect... Photo, videos, and more. Automatically.” The Company explained, “Life is full
11 of amazing moments you want to remember forever. The Backup Plus desktop drive lets you set
12 up easy automatic backups of all your stuff, so you know that even if ‘life happens’ to your
13 computer, your memories are always protected.”

14 **Plaintiffs Pozar and Nalick Experience**
15 **Failures with Their Seagate 3 TB HDDs**

16 27. Within the past three years, plaintiff Tim Pozar purchased multiple Seagate
17 Barracuda internal client HDDs, which he installed inside his personal computers and external
18 devices. Pozar purchased drives with an advertised capacity of three terabytes, and the drives
19 bore the model number ST3000DM001.

20 28. Pozar purchased the Barracuda HDDs for his own personal use from a local
21 computer store in San Francisco, California, and all drives were new and in their original
22 packaging. Pozar relied on the statements that Seagate made about its Barracuda HDDs, and
23 based on those statements, believed that the Barracudas were reliable hard disk drives. Pozar did
24 not know that Barracuda 3 TB HDDs had an extraordinarily high failure rate.

25 29. Since his purchase of the Barracuda HDDs, Pozar has experienced at least two
26 critical drive failures with the drives, which resulted in the loss of some or all of his data. Had
27

Pozar known that Seagate Barracuda 3 TB HDDs had a very high chance of data failure, Pozar would not have purchased his Barracuda drives.



30. Within the past three years, plaintiff Scott Nalick purchased a Seagate Backup Plus external client HDD, which he connected to his personal computer. Nalick purchased a drive with an advertised capacity of three terabytes, and the drive bore the model number STCA3000101. On information and belief, the internal drive, if shucked from its external casing, would bear the same model number as the Barracuda 3 TB HDD, ST3000DM001.

1 31. Nalick purchased the Backup Plus HDD for his own personal use from a retail
2 store in Dublin, California, and the drive was new and in its original packaging. Nalick relied on
3 the statements that Seagate made about its Backup Plus HDDs, and based on those statements,
4 believed that the Backup Plus was a reliable hard disk drive. Nalick did not know that Backup Plus
5 3 TB HDDs had an extraordinarily high failure rate.

6 32. Since his purchase of the Backup Plus HDD, Nalick's drive failed after over one
7 year of use. This failure resulted in Nalick losing all of the data stored on his Backup Plus drive,
8 including all of his personal family pictures and his entire digital music collection. When Nalick
9 contacted Seagate for technical support, Seagate refused to repair or replace the drive. Instead,
10 Seagate asked him to pay an *additional* \$600 to the Company in order to attempt to recover the
11 lost data and files.

12 33. Had Nalick known that Backup Plus 3 TB HDDs had a very high chance of data
13 failure, Pozar would not have purchased his Backup Plus drive.

14 34. Pozar and Nalick have been injured by Seagate's breach of the implied warranty of
15 merchantability and are owed damages equal to the full purchase price of their drives. Pozar and
16 Nalick have also been injured by paying more for Seagate 3 TB internal client HDDs than they
17 otherwise would have absent Seagate's failure to disclose the defect.

18 **Large-Scale Hard Drive Reliability Study Reveals That**
19 **Seagate 3 TB Client HDDs Fail at an Extraordinarily High Rate**

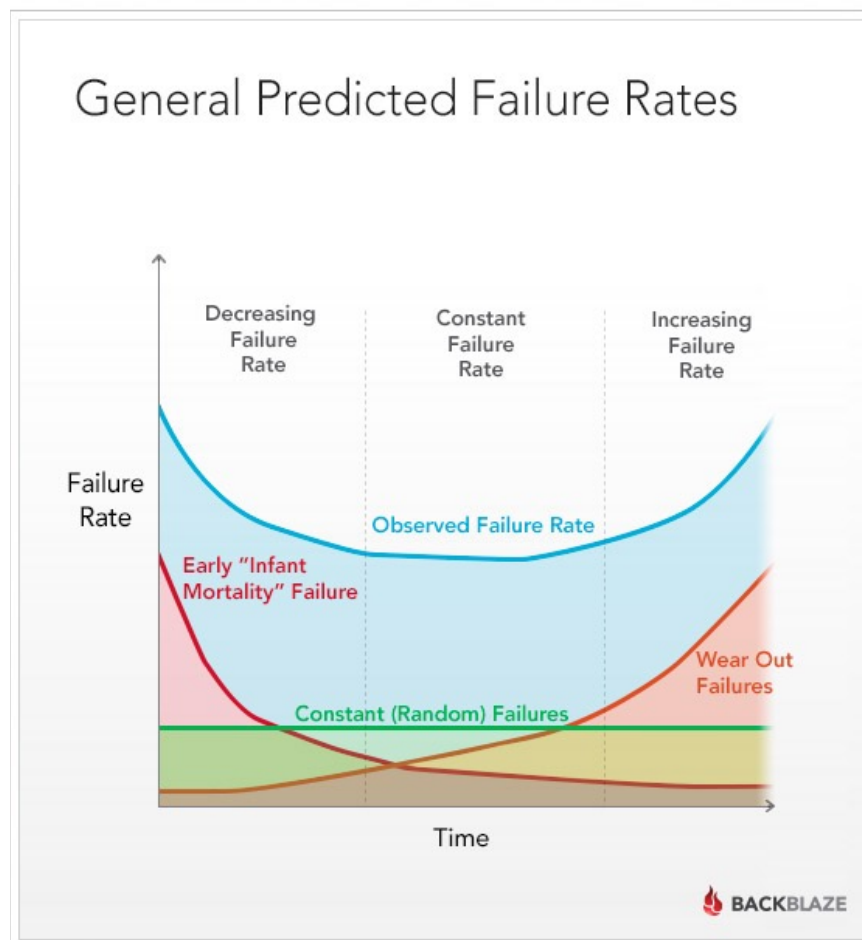
20 35. The failure of Plaintiffs' hard disk drives were not isolated cases. On the contrary,
21 recent studies have revealed that Seagate's 3 TB Barracuda and Backup Plus drives fail at a rate
22 that far exceeds the industry average.

23 36. In November 2013, online-storage company Backblaze, Inc. ("Backblaze")
24 released a detailed report entitled, "How long do disk drives last?" Backblaze uses more than
25 25,000 client HDDs to store over 75 petabytes of their customers' data and, as such, has
26 extensive experience evaluating the lifespan and failure rates of client HDDs.

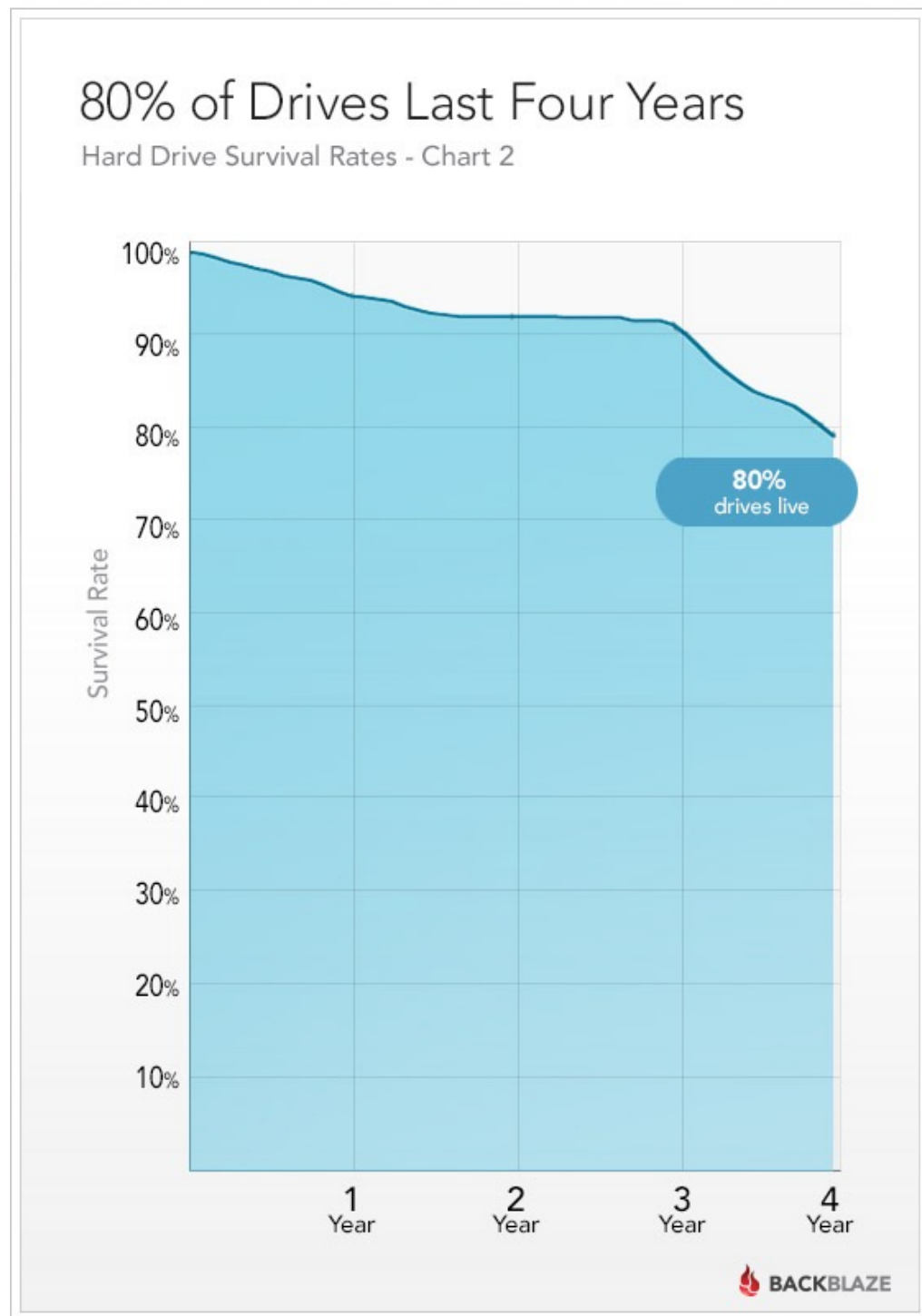
37. Backblaze groups its HDDs into storage pods, each of which contain 45 client HDDs. Before being deployed, each storage pod (and all of the drives in a storage pod) is extensively tested. The environment is climate controlled, and Backblaze regularly monitors each individual HDD to detect failures.

38. When a drive fails, Backblaze technicians undertake a series of steps to assess the health of the system. One of the health assessment steps is to remove all the drives from a storage pod for testing. The drives are then tested by (1) reformatting the drive and (2) reading and writing all the sectors on the drive. Only if a drive passes both tests can it be reformatted and reused.

39. Reliability engineers use a concept called the “Bathtub Curve” to describe expected failure rates. Defects generally result from three factors: (1) factory defects; (2) random failures; and (3) parts that wear out, resulting in failures after much use. The combination of these factors generally produce a bathtub-shaped failure rate curve, as depicted below:



40. In Backblaze's experience testing tens of thousands of HDDs, over 78% of client HDDs last longer than four years without experiencing a drive failure.



41. The failure rate for Seagate 3 TB HDDs was far different. Beginning in January 2012, Backblaze deployed 4,829 Seagate 3 TB HDDs. Backblaze purchased both internal Barracuda HDDs and external Backup Plus HDDs, from which they removed the enclosure. The model number of the drives, ST3000DM001, was the same for both the internal and external models.

Seagate 3TB Hard Drive Purchases

Model: ST3000DM001

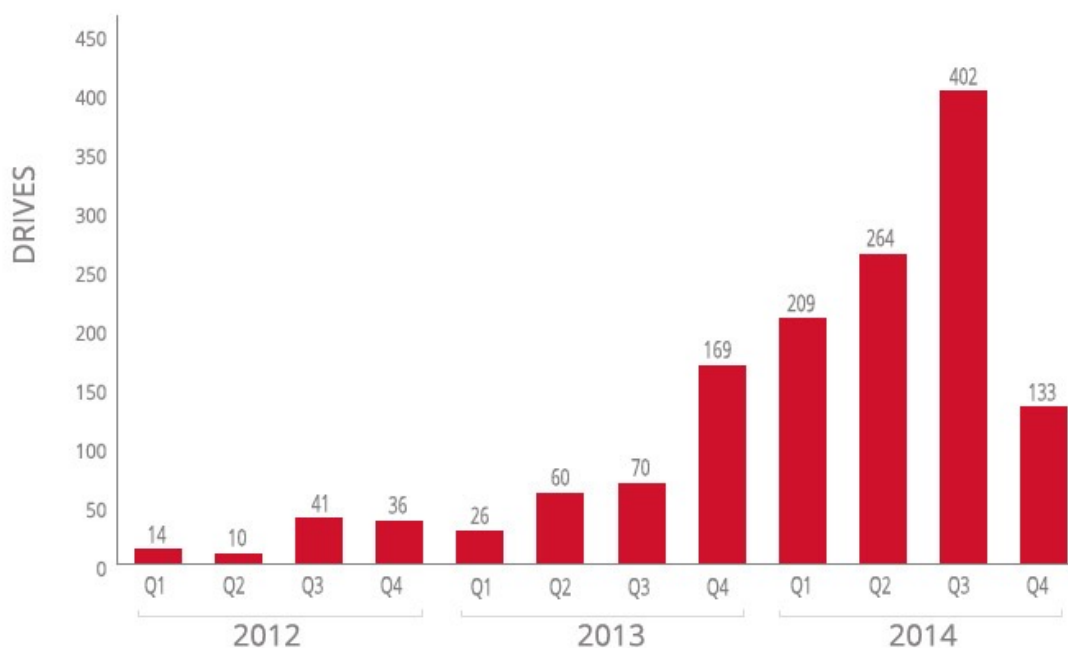
Month	Internal Drives	External Drives	Total
Nov-11		194	194
Dec-11		8	8
Jan-12	225	114	339
Feb-12	720	74	794
Mar-12	800		800
Apr-12	270		270
May-12			0
Jun-12	365		365
Jul-12	250	563	813
Aug-12		413	413
Sep-12		505	505
Oct-12			0
Nov-12		347	347
Dec-12		127	127
Totals	2,630	2,345	4,975

42. Based on Backblaze's experience testing tens of thousands of HDDs, it expected the drives' failure rate to follow the bathtub-shaped curve described earlier. Instead, the failure model painted a different picture entirely.

43. As of March 31, 2015, 1,423 of the 4,829 Seagate 3 TB HDDs that Backblaze deployed had failed in place, representing 29.5% of the drives.

Seagate 3 TB Drives Failed by Quarter

(Model: ST3000DM001)



44. But even that exceedingly high failure rate did not tell the entire story. Backblaze started to become suspicious that there was a latent problem with all Seagate 3 TB HDDs, so it began subjecting the drives to increased scrutiny.

45. During July and August 2013, three Backblaze storage pods, each containing 45 Seagate 3 TB HDDs, had drive failures. In all three cases, each time a drive was replaced, and the rebuilding process restarted, additional drive failures would occur. All of the Seagate 3 TB drives from the three affected storage pods were then removed and tested, and about half of the drives failed the first test, reformatting of the drive. Backblaze then subjected the remaining “good” drives to the second test, reading and writing the sectors on the drive, and an additional 50% of the Seagate 3 TB drives failed that test. These results were eye opening.

1 46. Over the next several months, Seagate 3 TB HDDs failed in noticeable quantities
2 —31 in October 2013, 68 in November 2013, 70 in December 2013—and the upward trend
3 continued into 2014. By the spring of 2014, Backblaze decided that if a Seagate 3 TB HDD
4 showed any type of drive failure, it would immediately migrate all of the data on the drive and
5 then remove and test all the drives in the storage pod.

6 47. In July 2014 alone, 189 Seagate 3 TB drives failed and another 273 were removed
7 from service. The total that failed or were removed in that one month, 462, represented 11.4% of
8 all of Backblaze’s Seagate 3 TB drives that were still operational as of July 1, 2014.

9 48. Backblaze declared drives “failed” when they failed in operation or during a
10 rebuilding process. It marked drives “removed” when they were removed from a storage pod that
11 contained failed drives.

12 49. When Backblaze went back and tested these “removed” Seagate 3 TB drives, it
13 found that *nearly 75% of the drives failed* at least one of the two tests after removal. When
14 accounting for the drives that failed after removal, an additional 1,948 drives that were first
15 deployed in 2012 were unusable.

16 50. Of the 4,190 Seagate 3 TB HDDs that Backblaze deployed in 2012, 1,342 failed in
17 place (32%), about 1,948 failed after removal (46%), about 649 were removed but did not fail any
18 tests (15%), and 251 remained in operation (6%) as of March 31, 2015. In total, a staggering *78% of*
19 *all Seagate 3 TB drives that Backblaze deployed in 2012 failed* either in place or after removal.

20 51. The following chart shows the month-by-month failures of the Seagate 3 TB drives
21 that Backblaze deployed in 2012, as of March 30, 2015:

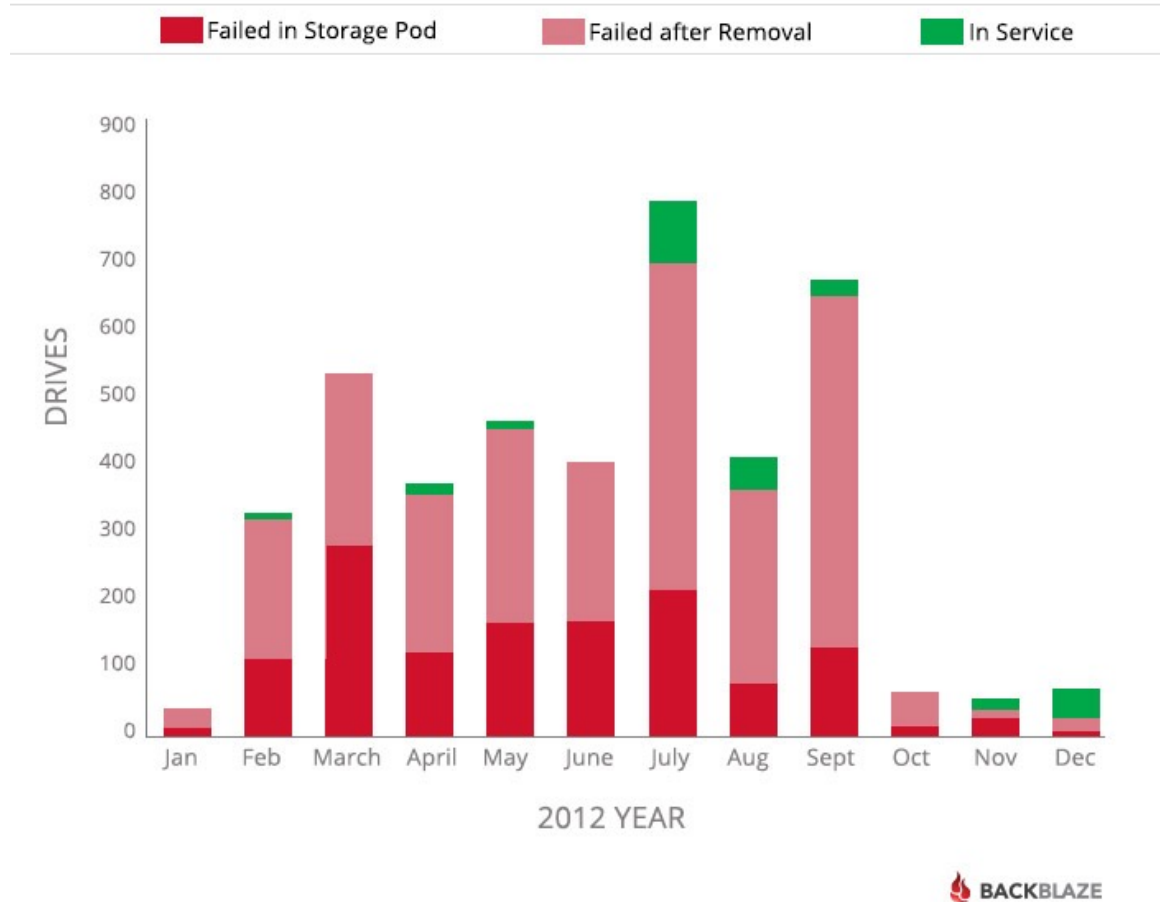
22 52. By contrast, the 3 TB client HDDs from other manufacturers that Backblaze
23 deployed during 2012 exhibited failure rates of less than 5%. For example, Backblaze deployed
24 2,5111 HGST 3 TB client HDDs in 2012, and only 103 of those drives failed, representing a
25 failure rate of just 4.1% after three years.¹

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¹ HGST is a subsidiary of Western Digital.

Status of Seagate 3 TB Drives Deployed in 2012

(Data last updated March 30, 2015. Model: ST3000DM001)



53. Even Seagate’s own 4 TB client HDDs did not exhibit the problems that plagued its 3 TB drives. In fact, Backblaze found that Seagate’s 4 TB model, marked ST4000DM000, had an annualized failure rate of just 2.6%, as of December 31, 2014.

54. In attempting to diagnose the issue with the Seagate 3 TB HDDs, Backblaze systematically ruled out any confounding factors related to its storage environment or its shucking of external drives for internal use. All of its drives were installed in the same storage pod environment, and the fact that there were such substantial differences in drive failures between

1 Seagate 3 TB HDDs and other drives, including Seagate’s 4 TB drives, ruled out the possibility
2 that its storage environment was the cause of the issue.

3 55. Likewise, Backblaze concluded that its process of shucking external drives for
4 internal use did not affect the failure rate of the drives. Backblaze purchased both Barracuda
5 internal drives and Backup Plus external drives and found that the failure rates did not differ
6 materially between shucked and non-shucked drives. Each rate was unacceptably high.

7 56. Backblaze, therefore, concluded that the cause of the staggering failure rates for
8 Seagate 3 TB HDDs was the the drives themselves. While Backblaze could not confirm the
9 precise cause of the defect, it speculated that these drives may have been disproportionately
10 affected by the 2011 floods in Thailand. Beginning in August 2011 and through 2012, up to 50% of
11 the world’s HDD production was affected by severe flooding from Tropical Storm Nock-ten.
12 Thailand is the world’s second-largest producer of HDDs, accounting for 25% of global
13 production, and during this time, 65 of its 77 provinces were declared flood disaster zones.

14 57. While Seagate CEO Steve Luczo claimed that the Company’s Thailand factories
15 were not directly affected by the floods, many of its component suppliers were. Seagate,
16 therefore, may have sourced components from flood-affected suppliers or used less expensive and
17 less reliable parts in an effort to make up for lost supply-chain inventory, resulting in a
18 substantially increased failure rate for its 3 TB drives.

19 58. During the 2011 Thailand floods, Seagate reduced its manufacturer’s warranty on
20 3 TB Barracuda and Backup Plus HDDs from three years to one year. One analyst, Steve
21 Duplessie with the Enterprise Strategy Group, who was quoted in a New York Times article
22 about the Seagate warranty reduction, said that reducing a warranty was “highly unusual” and
23 suggested the change was related to the Thailand floods.

1 **CLASS ACTION ALLEGATIONS**

2 59. Plaintiffs bring this class action on behalf of themselves and all others similarly
3 situated in California as members of a proposed Class defined as follows:

4 **All citizens of California who purchased a Seagate Barracuda**
5 **or Seagate Backup Plus hard disk drive with a three-terabyte**
6 **storage capacity during the period from September 4, 2011 to**
the present (the “Class Period”).

7 60. Within the Class, there is one subclass for purposes of Plaintiffs’ claims under the
8 Song-Beverly Consumer Warranty Act and the Consumer Legal Remedies Act (the “Consumer
9 Subclass” or the “Subclass”). The proposed Consumer Subclass is defined as follows:

10 **All Class Members who purchased a Seagate Barracuda or Backup Plus**
11 **three-terabyte hard disk drive for personal, family, or household purposes.**

12 61. Excluded from the Class are governmental entities, Defendant, any entity in which
13 Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal
14 representatives, employees, coconspirators, successors, subsidiaries, and assigns. Also excluded
15 from the Class are any judges, justices, or judicial officers presiding over this matter and the
16 members of their immediate families and judicial staff.

17 62. This action is brought and may be properly maintained as a class action pursuant
18 to CAL. CIV. PROC. CODE § 382, CAL. CIV. CODE § 1781, and the procedural provisions of Rule
19 23 of the Federal Rules of Civil Procedure as adopted for use in California. This action satisfies
20 the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements
21 of these rules.

22 63. **Numerosity.** The Class and Subclass are so numerous that the individual joinder
23 of all members is impracticable. While the Class’s and Subclass’s exact number are currently
24 unknown and can only be ascertained through appropriate discovery, Plaintiffs, on information
25 and belief, allege that the the Class and Subclass include at least thousands of persons.

26 64. **Commonality.** Common legal and factual questions exist that predominate over
27 any questions affecting only individual Class or Subclass Members. These common questions,

1 which do not vary among Class Members and which may be determined without reference to any
2 Class Member's individual circumstances, include, but are not limited to:

- 3 a. Whether Seagate 3 TB Barracuda and Backup Plus HDDs contain a defect that
4 causes the drives to fail prematurely;
- 5 b. Whether Seagate 3 TB Barracuda and Backup Plus HDDs are of the same
6 quality as those generally acceptable in the market;
- 7 c. Whether Seagate 3 TB Barracuda and Backup Plus HDDs are fit for the
8 ordinary purposes for which the goods are used;
- 9 d. Whether Seagate 3 TB Barracuda and Backup Plus HDDs were adequately
10 contained, packaged, and labeled;
- 11 e. Whether Seagate breached its implied warranty of merchantability in violation
12 of the Song-Beverly Consumer Warranty Act;
- 13 f. Whether Seagate represented that its 3 TB Barracuda and Backup Plus HDDs
14 have characteristics, uses, or benefits that they do not have in violation of the
15 CLRA;
- 16 g. Whether Seagate represented that its 3 TB Barracuda and Backup Plus HDDs
17 are of a particular standard, quality, or grade when they are of another in
18 violation of the CLRA;
- 19 h. Whether Seagate's representations and omissions regarding their 3 TB
20 Barracuda and Backup Plus HDDs were false and misleading and constitute
21 false advertising in violation of the FAL;
- 22 i. Whether Seagate engaged in unlawful, fraudulent, or unfair business practices
23 in violation of the UCL,
- 24 j. Whether Plaintiffs, the Class, and the Subclass have been damaged by the
25 wrongs alleged and are entitled to compensatory or punitive damages;
- 26 k. Whether Plaintiffs and the Class are entitled to injunctive or other equitable
27 relief, including restitution.

1 65. Each of these common questions is also susceptible to a common answer that is
2 capable of classwide resolution and will resolve an issue central to the validity of the claims.

3 66. ***Adequacy of Representation.*** Plaintiffs are adequate Class and Subclass
4 representatives because they are Class and Subclass Members, and their interests do not conflict
5 with the Class's or Subclass's interests. Plaintiffs retained counsel who are competent and
6 experienced in consumer-protection class actions. Plaintiffs and their counsel intend to prosecute
7 this action vigorously for the Class's and Subclass's benefit and will fairly and adequately protect
8 their interests.

9 67. ***Predominance and Superiority.*** The Class and Subclass can be properly
10 maintained because the above common questions of law and fact predominate over any questions
11 affecting individual Class or Subclass Members. A class action is also superior to other available
12 methods for the fair and efficient adjudication of this litigation because individual litigation of
13 each Class and Subclass Member's claim is impracticable. Even if each Class Member could
14 afford individual litigation, the court system could not. It would be unduly burdensome
15 if thousands of individual cases proceed. Individual litigation also presents the potential
16 for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk
17 of an inequitable allocation of recovery among those with equally meritorious claims. Individual
18 litigation would increase the expense and delay to all parties and the courts because it requires
19 individual resolution of common legal and factual questions. By contrast, the class-action device
20 presents far fewer management difficulties and provides the benefit of a single adjudication,
21 economies of scale, and comprehensive supervision by a single court.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Song-Beverly Consumer Warranty Act,**
3 **Cal. Civ. Code §§ 1790 *et seq.***

4 68. Plaintiffs, individually and on behalf of the Consumer Subclass, incorporate by
5 reference all of the allegations contained in the preceding paragraphs of this Complaint.

6 69. Plaintiffs bring this cause of action individually and on behalf of the proposed
7 Consumer Subclass against Defendant.

8 70. Plaintiffs and the Subclass purchased Seagate 3 TB Barracuda and Backup Plus
9 HDDs manufactured by Defendant that were marketed for reliable consumer data storage.

10 71. Plaintiffs and the Subclass purchased Seagate 3 TB Barracuda and Backup Plus
11 HDDs new and in their original packaging and did not alter the drives.

12 72. At the time of purchase, Defendant was in the business of manufacturing and
13 selling consumer hard drives, including 3 TB Barracuda and Backup Plus HDDs.

14 73. Seagate's 3 TB Barracuda and Backup Plus HDDs were used and bought primarily
15 for personal, family, or household purposes and are therefore consumer goods.

16 74. Seagate's 3 TB Barracuda and Backup Plus HDDs contained a latent defect that
17 causes the drives to fail at an unacceptably high rate far in excess of industry standards for this
18 type of hard disk drive. This latent defect was present in Seagate's 3 TB Barracuda and Backup
19 Plus hard drives when the drives left the exclusive control of Defendant and therefore existed
20 during the duration of the warranty period.

21 75. Seagate's 3 TB Barracuda and Backup Plus HDDs were not of the same quality as
22 those generally acceptable in the trade; were not fit for the ordinary purposes of consumer data
23 storage for which the goods are used; were not adequately contained, packaged, and labeled; and
24 did not conform to the promises and facts stated on the container and label.

25 76. Defendant, therefore, breached the implied warranty of merchantability, which by
26 law is provided in every consumer agreement for the sale of goods, including for the sale of
27 Seagate's 3 TB Barracuda and Backup Plus HDDs.

77. As a direct and proximate cause of Defendant's breach of the implied warranty of merchantability, Plaintiffs and the Subclass have been damaged by receiving an inferior product from that which they were promised. Plaintiffs and the Subclass, therefore, have the right to cancel and recover the purchase price of their Seagate 3 TB Barracuda and Backup Plus HDDs.

SECOND CAUSE OF ACTION

**Violation of California Consumer Legal Remedies Act,
Cal. Civ. Code §§ 1750 *et seq.***

78. Plaintiffs, individually and on behalf of the Consumer Subclass, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

79. Plaintiffs bring this cause of action individually and on behalf of the proposed Consumer Subclass against Defendant.

80. Defendant is a “person” as defined in CAL. CIV. CODE § 1761(c).

81. Plaintiffs and the Subclass acquired and purchased Seagate 3 TB Barracuda and Backup Plus HDDs for personal, family, or household purposes and are therefore “consumers” as defined in CAL. CIV. CODE § 1761(d).

82. The Seagate 3 TB Barracuda and Backup Plus HDDs that Plaintiffs and the Subclass purchased from Defendant are “goods” as defined by CAL. CIV. CODE § 1761(a).

83. The purchases by Plaintiffs and the Subclass of the goods sold by Defendant constitute “transactions” as defined by CAL. CIV. CODE §§ 1761(e) and 1770.

84. In connection with its sale of goods to Plaintiffs and the Subclass, Defendant violated the CLRA by:

A. Misrepresenting to Plaintiffs and the Subclass that Seagate 3 TB Barracuda and Backup Plus HDDs were reliable consumer hard drives, when in fact, they have a latent defect that causes the drive to fail, in violation of CAL. CIV. CODE §§ 1770(a)(5), (7), (9), and (16);

- 1 B. Misrepresenting to Plaintiffs and the Subclass that Defendant's goods had
2 characteristics, uses, and benefits that they did not have, in violation of CAL.
3 CIV. CODE § 1770(a)(5);
- 4 C. Representing to Plaintiffs and the Subclass that Defendant's goods were of a
5 particular standard, quality, or grade, when they were of another in violation of
6 CAL. CIV. CODE § 1770(a)(7);
- 7 D. Advertising goods to Plaintiffs and the Subclass with the intent not to sell them
8 as advertised, in violation of CAL. CIV. CODE § 1770(a)(9); and
- 9 E. Misrepresenting to Plaintiff and the Subclass that the subject of a transaction
10 has been supplied in accordance with a previous representation when it had
11 not, in violation of CAL. CIV. CODE § 1770(a)(16).

12 85. In addition, under California law, a duty to disclose arises in four circumstances:
13 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had
14 exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively
15 conceals a material fact from the plaintiff; and (4) when the defendant makes partial
16 representations but also suppresses some material facts.

17 86. Defendant had a duty to disclose to Plaintiffs and the Subclass that Seagate 3 TB
18 Barracuda and Backup Plus HDDs contain a latent defect that causes the drives to fail for the
19 following three independent reasons: (a) Defendant had exclusive knowledge of the information at
20 the time of sale; (b) Defendant actively concealed from Plaintiffs and the Subclass this latent
21 defect, which causes substantial data loss and is important to customers; and (c) Defendant made
22 partial representations to Plaintiffs and the Subclass regarding the reliability of the drives.

23 87. Defendant violated the CLRA by supplying defective 3 TB Barracuda and Backup
24 Plus HDDs and by further concealing this latent defect from Plaintiffs and the Subclass.

25 88. Defendant's misrepresentations and omissions in violation of the CLRA were
26 likely to mislead an ordinary consumer. Plaintiffs and the Subclass reasonably understood
27 Defendant's representations and omissions to mean that Seagate 3 TB Barracuda and Backup

1 Plus HDDs were reliable for typical consumer use and did not contain a latent defect that would
2 frequently result in severe data loss.

3 89. Defendant's misrepresentations and omissions alleged herein were material in that
4 a reasonable person would attach importance to the information and would be induced to act
5 upon the information in making purchase decisions.

6 90. Plaintiffs and the Subclass relied to their detriment on Defendant's
7 misrepresentations and omissions in purchasing Seagate 3 TB Barracuda and Backup Plus HDDs.

8 91. Plaintiffs, on behalf of themselves and the Subclass, demand judgment against
9 Defendant under the CLRA for injunctive relief and restitution to Plaintiffs and the Subclass in
10 an amount to be proven at trial.

11 92. Plaintiffs, on behalf of themselves and the Subclass, seek compensatory damages
12 in an amount to be proven at trial.

13 93. In light of Defendant's oppression, fraud, and malice, Plaintiffs, on behalf of
14 themselves and the Subclass, also seek punitive damages under Cal. Civ. Code § 3294 in an
15 amount to be proven at trial.

16 94. Pursuant to Cal. Civ. Code § 1782(a), on October 7, 2015, counsel for Plaintiffs and
17 the Subclass served Seagate Technology LLC by United States certified mail, return receipt
18 requested, with notice of its violations of the CLRA (the "CLRA Notice"). A true and accurate
19 copy of the CLRA Notice is attached as Exhibit A. The CLRA Notice was received by Defendant
20 on October 9, 2015, as evidenced by the Domestic Return Receipt signed by its agent. A true and
21 accurate copy of the Domestic Return Receipt is attached as Exhibit B.

22 95. Defendant failed to respond to the CLRA Notice and failed to appropriately
23 correct, repair, replace, or otherwise remediate the wrongs complained of in the CLRA Notice
24 under Cal. Civ. Code § 1782(b)-(c).

25 96. Accordingly, thirty days having passed since receipt of the CLRA Notice,
26 Plaintiffs are now entitled to recover actual damages, punitive damages, attorneys' fees and costs,
27 and any other relief deemed proper under Cal. Civ. Code § 1782(d).

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106. Unless restrained by this Court, Defendant will continue to engage in untrue and misleading advertising, as alleged above, in violation of CAL. BUS. & PROF CODE §§ 17500 *et seq.*

107. As a result, Plaintiffs and each member of the Class have been injured, have lost money or property, and are entitled to relief. Plaintiffs and the Class seek restitution, injunctive relief, and all other relief permitted under CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

FOURTH CAUSE OF ACTION

**Violation of California Unfair Competition Law,
Cal. Bus. & Prof. §§ 17200 *et seq.***

108. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

109. Plaintiffs bring this cause of action individually and on behalf of the proposed Class against Defendant.

110. Plaintiffs have standing to pursue this cause of action because they have suffered injury in fact and have lost money or property as a result of Defendant's actions as described *supra*. All Class Members overpaid for the price of Seagate 3 TB Barracuda and Backup Plus HDDs due to Defendant's concealment of a latent defect with the drives. In addition, Plaintiffs and the Class have been injured by the significant costs caused by data loss or the prospect of data loss, including costs associated with recovering lost or damaged files, costs associated with purchasing replacement hard disk drives, costs associated with monitoring their hard disk drives for indications of an impending data failure, and costs associated with backing up their data.

111. Defendant’s actions as alleged herein constitute an “unlawful” practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.* because Defendant breached the implied warranty of merchantability in violation of the California Song-Beverly Consumer Warranty Act, CAL. CIV. CODE §§ 1790 *et seq.* and further violated the CLRA, CAL. CIV. CODE §§ 1750 *et seq.* and the FAL, CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

1 112. Defendant’s actions as alleged herein constitute a “fraudulent” practice because,
2 by representing that its Seagate 3 TB Barracuda and Backup Plus HDDs were reliable for ordinary
3 consumer use but concealing that the drives actually contained a latent defect likely to result in
4 severe data loss, Defendant’s conduct was likely to deceive consumers. Defendant’s failure to
5 disclose this defect, especially in light of its claims about reliability, constitute a material omission
6 in violation of the UCL.

7 113. Defendant’s actions as alleged in this Complaint constitute an “unfair” practice,
8 because they offend established public policy and are immoral, unethical, oppressive,
9 unscrupulous, and substantially injurious to Seagate’s customers. The harm caused by Seagate’s
10 wrongful conduct outweighs any utility of such conduct and has caused—and will continue to
11 cause—substantial injury to Plaintiffs and the Class. Seagate could and should have chosen one of
12 many reasonably available alternatives, including not selling hard disk drives that contained a
13 latent defect, disclosing the defect to prospective purchasers, and/or not representing that its
14 HDDs were suitable for consumer use. Additionally, Defendant’s conduct was “unfair,” because
15 it violated the legislatively declared policies reflected by California’s strong consumer protection,
16 consumer warranty, and false advertising laws, including the California Song-Beverly Consumer
17 Warranty Act, CAL. CIV. CODE §§ 1790 *et seq.*, the CLRA, CAL. CIV. CODE §§ 1750 *et seq.*, and
18 the FAL, CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

19 114. As a result of Defendant’s unlawful, fraudulent, and unfair conduct, Plaintiffs and
20 the Class were damaged. Plaintiffs and the Class received an inferior product from that which
21 they were promised. Had Defendant disclosed the latent defect with its 3 TB Barracuda and
22 Backup Plus HDDs, Plaintiffs and the Class would not have purchased the drives or would have
23 paid substantially less.

24 115. Defendant’s wrongful business practices constitute a continuing course of unfair
25 competition because it continues to represents that its 3 TB Barracuda and Backup Plus HDDs
26 are reliable, continues to fail to disclose the latent defect, and continues to refuse to repair or
27 replace the drives outside of its one-year express warranty period. Plaintiffs and the Class,

1 therefore, seek equitable relief to remedy Seagate's deceptive marketing, advertising, and
2 packaging and to recall all affected hard disk drives.

3 116. Plaintiffs and the Class also seek an order requiring Defendant to make full
4 restitution of all monies they have wrongfully obtained from Class Members, as well as all other
5 relief permitted under CAL. BUS. & PROF. CODE §§ 17200 *et seq.*

6
7 **PRAYER FOR RELIEF**

8 Plaintiffs, on behalf of themselves and the Class, request that the Court order the
9 following relief and enter judgment against Defendant as follows:

- 10 A. An order certifying the proposed Class and Subclass under CAL. CIV.
11 PROC. CODE § 382 and CAL CIV. PROC. CODE § 1781;
- 12 B. An order appointing Plaintiffs and their counsel to represent the Class;
- 13 C. A declaration that Defendant has engaged in the illegal conduct alleged;
- 14 D. An order that Defendant be permanently enjoined from its improper conduct;
- 15 E. A judgment awarding Plaintiffs and the Class restitution and disgorgement of
16 all compensation obtained by Defendant from its wrongful conduct;
- 17 F. A judgment awarding Plaintiffs and the Class compensatory damages
18 in an amount to be proven at trial;
- 19 G. A judgment awarding Plaintiffs and the Subclass punitive damages
20 in an amount to be proven at trial;
- 21 H. Prejudgment and postjudgment interest at the maximum allowable rate;
- 22 I. Attorneys' fees and expenses and the costs of this action; and
- 23 J. All other relief that the Court deems necessary, just, and proper.
- 24

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial by jury on all causes of action so triable.

27

1 DATED: November 19, 2015

SCHUBERT JONCKHEER & KOLBE LLP

2 BY: 
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15 *Attorneys for Plaintiffs Tim Pozar*
16 *and Scott Nalick, Individually and on*
17 *Behalf of All Other Similarly Situated*

EXHIBIT A

SCHUBERT JONCKHEER & KOLBE LLP

Attorneys at Law

Robert C. Schubert
Willem F. Jonckheer
Dustin L. Schubert

Of Counsel
Miranda P. Kolbe

Noah M. Schubert
Kathryn Y. Schubert

October 7, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Seagate Technology LLC
10200 S De Anza Blvd.
Cupertino, CA 95014

Re: Notice of Violation of California Consumer Legal Remedies Act

Dear Seagate Technology LLC:

Pursuant to the California Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the “CLRA”), our clients, Tim Pozar and Scott Nalick, hereby give notice that Seagate Technology LLC (“Seagate” or the “Company”), has engaged in conduct in violation of the CLRA in connection with the marketing, advertising, and sale of Barracuda Desktop Hard Drives and Backup Plus Desktop Drives (together, the “HDDs”).

Mr. Pozar, Mr. Nalick, and numerous other consumers purchased the HDDs based on the misleading representations by the Company that the HDDs were reliable consumer hard drives, when in fact, they have a latent defect that causes the drives to fail at an extraordinarily high rate, resulting in severe data loss.

The Company had a duty to disclose to consumers the latent defect because (a) the Company had exclusive knowledge of the defect at the time of sale; (b) the Company actively concealed from consumers the latent defect, which causes substantial data loss and is important to consumers; and (c) the Company made partial representations to consumers regarding the reliability of the HDDs.

As a result of the Company’s fraudulent marketing scheme, consumers purchased Seagate HDDs based on the false belief that the HDDs were reliable for consumer use and did not contain a latent defect that would frequently result in severe data loss.

The Company’s conduct violated the CLRA by:

- Misrepresenting to consumers that the HDDs were reliable consumer hard drives, when in fact, they have a latent defect that causes the drive to fail, in violation of Cal. Civ. Code §§ 1770(a)(5),(7),(9), and (16);

- Misrepresenting to consumers that the HDDs had characteristics, uses, and benefits that they did not have, in violation of Cal. Civ. Code §1770(a)(5);
- Representing to consumers that the HDDs were of a particular standard, quality, or grade, when they were of another, in violation of Cal. Civ. Code § 1770(a)(7);
- Advertising the HDDs with the intent not to sell them as advertised, in violation of Cal. Civ. Code § 1770(a)(9); and
- Misrepresenting to consumers that the subject of a transaction had been supplied in accordance with a previous representation when it had not, in violation of Cal. Civ. Code § 1770(a)(16).

On September 4, 2015, Mr. Pozar and Mr. Nalick, individually and on behalf of all other similarly situated, filed a class action complaint against the Company in the Superior Court of the State of California for the City and County of San Francisco (Case No. CGC-15-547787) (the "Complaint"), alleging claims under California consumer protection laws, including a claim seeking injunctive relief under the CLRA. The allegations in the Complaint, which is attached to this letter, are hereby incorporated by reference. Pursuant to Cal. Civ. Code § 1782(d), the Complaint does not currently seek damages in connection with its CLRA claim.

Mr. Pozar and Mr. Nalick hereby demand that within thirty days of receiving this letter, the Company fully compensate all purchasers of the HDDs in California for the full purchase price of their HDDs.

If the Company fails to rectify its violations of the CLRA by complying with this demand within thirty days of receiving this letter, then pursuant to the CLRA, Mr. Pozar and Mr. Nalick intend to amend the Complaint to seek compensatory and punitive damages, restitution, and any other appropriate relief individually and on behalf of the putative class.

If you have any questions regarding this notice and demand, please contact me at 415.788.4220 or nschubert@schubertlawfirm.com.

Respectfully,



Noah Schubert

Encl.

EXHIBIT B

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>Kim Zelman</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p><i>Seagate Technology LLC</i> <i>10200 S De Anza Blvd.</i> <i>Cupertino, CA 95014</i></p>	<p>B. Received by (Printed Name) <i>Kim Zelman</i></p>	<p>C. Date of Delivery <i>10-9-15</i></p>
	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
	<p>3. Service Type</p> <p> <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
<p>2. Article Number (Transfer from service)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7011 3500 0003 2807 2254</p>		
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-15</p>		