

**SETTLEMENT AGREEMENT**

Made as of September 3, 2021

**SHELDON IRVING**

**and**

**WESTERN DIGITAL CORPORATION and  
WESTERN DIGITAL CANADA CORPORATION**

(Supreme Court of British Columbia, File No. S-205402, Vancouver Registry)

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## **PREAMBLE**

Sheldon Irving as proposed representative Plaintiff in the Action, and the Defendants, Western Digital Corporation and Western Digital Canada Corporation, hereby enter into this Settlement Agreement and Schedules providing for the settlement of claims arising in the Action, pursuant to the terms and conditions set forth herein, and subject to approval of the Court;

## **RECITALS**

A. WHEREAS, the Plaintiff commenced the Action against the Defendants on May 22, 2020 as a proposed class proceeding pursuant to a Notice of Civil Claim advancing claims on behalf of all persons in Canada who purchased WD RED NAS Drives with shingled magnetic recording technology during the Class Period (model numbers WD20EFAX, WD30EFAX, WD40EFAX and WD60EFAX) alleging that the Defendants changed the technology used in the WD RED NAS Drives from conventional magnetic recording to shingled magnetic recording and misled consumers by not informing them of the change in breach of sale of goods legislation, consumer protection legislation, the common law of unjust enrichment, section 52 of the *Competition Act*, RSC 1985, c. C-34, and section 380(2) of the *Criminal Code*, RSC 1985, c C-46;

B. WHEREAS, the Action has not yet been certified;

C. WHEREAS, despite their belief that the allegations advanced in the Action are unfounded and that it has good and reasonable defences both to certification and on the merits, the Defendants have agreed to enter into this Settlement Agreement in order to achieve final resolution of all claims asserted or which could have been asserted against them, individually or collectively, by the Plaintiff in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

D. WHEREAS, the Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any unlawful conduct, wrongdoing or blame of any kind, on their behalf or on behalf of their corporate successors or predecessors, either as alleged or at all;

E. WHEREAS, the Parties intend by this Settlement Agreement to resolve all past, present, and future claims of Class Members in any way arising out of or relating to the Action;

F. WHEREAS, Class Counsel and the Defendants, through counsel, have engaged in extensive, arm's-length negotiations that have resulted in this Settlement Agreement;

G. WHEREAS, the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, and having regard to the burden and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiff and the Class Members;

H. WHEREAS, the Parties therefore wish to, and hereby do, fully and finally resolve the Action against the Defendants without admission of liability;

I. WHEREAS, the Defendants expressly reserve their rights to contest certification of any other related or unrelated proceedings and their rights to defend on the merits any other related or unrelated proceedings.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the undersigned on behalf of the Plaintiff, Class Members and the Defendants that all claims of Class Members shall be settled and that, on the Effective Date, Class Counsel shall enter and obtain a filed Consent Dismissal Order without costs in the Action dismissing all claims against the Defendants with like effect as if after a trial upon the merits subject to the Court retaining jurisdiction to supervise and address matters related to the implementation and administration of the Settlement Agreement and the Parties shall consent to the Court Orders finally approving the settlement:

## **SECTION 1:**

### **DEFINITIONS**

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Action** means *Sheldon Irving v. Western Digital Corporation and Western Digital Canada Corporation* (Supreme Court of British Columbia, Action No. S-205402, Vancouver Registry).
- (2) **Administration Expenses** means all fees (excluding Class Counsel Fees), disbursements, expenses, costs, taxes, and any other amounts incurred or payable in relation to the implementation and operation of this Settlement Agreement, including the costs of notices and claims administration. The Defendants will pay up to CAD \$25,000 on top of the Maximum Settlement Funding towards Administration Expenses. If the Administration Expenses are greater than CAD \$25,000, they will be paid out of the Maximum Settlement Funding.
- (3) **Cash Payment** means any cash payments issued to Claimants pursuant to the terms of Section 5.1 of this Settlement Agreement.
- (4) **Claim** means the request made by Class Members or their representatives for Cash Payment as provided for in Sections 5.1 and 5.2.
- (5) **Claimant** means a Class Member who submits a Claim Form pursuant to Section 5.2.
- (6) **Claims Administrator** means the entity appointed by the Court to administer this Settlement Agreement, and any employees of such entity.
- (7) **Claims Deadline** is the date that is sixty (60) days from the Claims Period Commencement Date.
- (8) **Claims Forms** means the online form which must be submitted to the Claims Administrator by Class Members in order to claim a Cash Payment pursuant to Section 5.2.
- (9) **Claims Period** means the period beginning on the Claims Period Commencement Date and ending on the Claims Deadline.
- (10) **Claims Period Commencement Date** means the date that Notice of Settlement Approval and Claims Procedures is first published.
- (11) **Claims Review Deadline** is the date that is thirty (30) days after the Claims Deadline.

- (12) ***Class Counsel*** means Mathew P Good Law Corporation and Slater Vecchio LLP.
- (13) ***Class Counsel Fees*** include the fees of Class Counsel for the prosecution of the Action, as well as taxes and disbursements, as outlined in Section 10: 10. Class Counsel Fees are subject to approval of the Court on application by Class Counsel.
- (14) ***Class Members*** means all persons in Canada who purchased WD RED NAS Drives in Canada with model numbers WD20EFAX, WD30EFAX, WD40EFAX, and WD60EFAX during the Class Period.
- (15) ***Class Period*** means February 15, 2019 to April 22, 2020.
- (16) ***Court*** means the Supreme Court of British Columbia.
- (17) ***Cy Près Donation*** is the amount to be paid to the Law Foundation as provided for in Section 6.
- (18) ***Defence Counsel*** means Fasken Martineau DuMoulin LLP.
- (19) ***Defendants*** means Western Digital Corporation and Western Digital Canada Corporation.
- (20) ***Distribution Protocol*** means the protocol that governs the distribution of the Maximum Settlement Funding and the administration and claims process developed to do so.
- (21) ***Effective Date*** means the date when the Second Order becomes a Final Order.
- (22) ***Final Order*** means the final judgment or final approval order entered by the Court in respect of the approval of this Settlement Agreement, and implementing it in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the orders or judgments upon a final disposition of all appeals.
- (23) ***First Order*** means the order issued by the Court to: (1) approve certification for settlement purposes on consent of the Parties; and (2) approve Notice of Certification and Settlement Approval Hearing.

- (24) **Maximum Settlement Funding** is CAD \$375,000, which is the maximum amount of money the Defendants will pay to fund the payment of Cash Payments to Claimants, the Cy Près Donation, Class Counsel Fees, taxes and disbursements, any Administration Expenses in excess of CAD \$25,000, plus the separate provision of CAD \$25,000 for Administration Expenses.
- (25) **Notice Period** means sixty (60) days from the Claims Period Commencement Date.
- (26) **Notice of Certification and Settlement Approval Hearing** means the form of notice as approved by the Court to inform Class Members of: (1) certification of the Action in accordance with section 19 of the *Class Proceedings Act*, RSBC 1996, c 50; and (2) the date and location of the hearing to approve this Settlement Agreement and the principle elements of this Settlement Agreement.
- (27) **Notice of Settlement Approval and Claims Procedures** means the form of notice as approved by the Court to inform the Class Members of: (1) the approval of this Settlement Agreement; and (2) the process by which the Class Members may apply to claim Cash Payments.
- (28) **Objection Date** means the date by which Class Members must deliver to Class Counsel any written objections to the approved Settlement, along with any supporting documentation. Class Counsel shall ensure any written objections received by the Objection Date are served on counsel for the Defendants and filed with the Court.
- (29) **Opt-Out** means a Class Member who has submitted a valid written election to opt-out of the Action by the Opt-Out Date.
- (30) **Opt-Out Date** means thirty (30) days from the first publication of Notice of Certification.
- (31) **Parties** means the Plaintiff, Class Members, and the Defendants.
- (32) **Plaintiff** means Sheldon Irving.
- (33) **Released Claims** means the Claims as released in accordance with Section 9.1 of this Settlement Agreement.

- (34) **Released Parties** means the Defendants and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, shareholders, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, and representatives. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein. Released Parties includes all persons/entities/organizations described above, even if not referenced by name in this Settlement Agreement.
- (35) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff, Class Members, and their respective successors, heirs, executors, administrators, trustees, and assigns, and their affiliated, predecessor, successor, and related companies.
- (36) **Second Order** means the order issued by the Court to: (1) approve the Settlement Agreement; (2) approve the Distribution Protocol; and (3) approve the appointment of the Claims Administrator.
- (37) **Maximum Settlement Funding** is CAD \$375,000, which is the maximum amount of money the Defendants will pay to fund the payment of Cash Payments to Claimants, the Cy Près Donation, Class Counsel Fees, taxes and disbursements, any Administration Expenses in excess of CAD \$25,000, plus the separate provision of CAD \$25,000 for Administration Expenses..
- (38) **Settlement Agreement** or **Settlement** means this agreement, including the Recitals and Schedules.
- (39) **WD RED NAS Drives** means the Western Digital RED Network Attached Storage devices with model numbers WD20EFAX, WD30EFAX, WD40EFAX, and WD60EFAX.

**SECTION 2:**  
**CONDITION PRECEDENT**

**2.1 Court Approval**

Subject to Sections 8.1 and 8.2, this Settlement Agreement shall be null and void and of no force or effect unless the Court approves this Settlement Agreement, the orders contemplated herein have become Final Orders and the Effective Date has occurred.

**SECTION 3:**  
**SETTLEMENT APPROVAL**

**3.1 Best Efforts**

The Parties will use their best efforts to: (1) recommend approval of this Settlement Agreement to the Court; (2) obtain approval of this Settlement Agreement and to carry out its terms; (3) support the Settlement contemplated by this Settlement Agreement in all public statements; and (4) effectuate the final dismissal with prejudice of the Action as against the Defendants, subject to the Court retaining jurisdiction to supervise and address matters related to the implementation and administration of the Settlement Agreement.

**3.2 Notice Required**

The Plaintiff and the Class Members in the Action shall be given the following notices: (1) Notice of Certification and Settlement Approval Hearing; (2) Notice of Settlement Approval and Claims Procedures; and (3) termination of this Settlement Agreement if it is properly terminated pursuant to Sections 8.1 and 8.2 or as otherwise ordered by the Court.

**3.3 Forms of Notices**

- (a) The notices required shall be substantially in the forms attached hereto as **Schedule “A”** (Notice of Certification and Settlement Approval Hearing) and **Schedule “B”** (Notice of Settlement Approval and Claims Procedures).
- (b) The Notice of Settlement Approval shall include the procedure for opting-out of the Action.

### **3.4 Method of Disseminating Notices**

- (a) The notices required shall be disseminated by direct email to:
  - (i) all persons in Canada who registered their WD RED NAS Drives with Western Digital; and
  - (ii) all of Western Digital's direct retailers and distributors in Canada that sell WD RED NAS Drives.
- (b) Class Counsel shall publish the notices on their respective websites.
- (c) The Parties will cooperate in the preparation of any written or verbal communications in relation to the Settlement Agreement or the Action.

### **3.5 Notice Costs**

The Defendants shall pay all reasonable notice costs as part of the Administration Expenses up to a maximum of CAD \$25,000 in addition to the Maximum Settlement Funding. Any additional Administration Expenses will come out of the Maximum Settlement Funding.

### **3.6 Motions Approving Notice**

- (a) As soon as practicable after the Settlement Agreement is executed, the Plaintiff shall bring a motion for the First Order.
- (b) The First Order shall, among other things approve the Notice of Certification and Settlement Approval Hearing.
- (c) The First Order shall, among other things:
  - (i) Certify the Action for settlement purposes on consent of the Parties, subject to the terms and conditions of this Settlement Agreement, including the Defendants' express reservation of rights to contest certification of any other related or unrelated proceedings and their rights to defend on the merits any other related or unrelated proceedings; and

- (ii) Approve the Notice of Certification and Settlement Approval Hearing.
- (d) The form of the First Order shall be substantially in the form attached hereto as **Schedule “C”**.

### **3.7 Motions for Settlement Approval**

- (a) As soon as practicable after the First Order is granted, the Plaintiff shall bring a motion before the Court to obtain the Second Order.
- (b) Class Counsel will provide the necessary affidavit evidence to support the Court’s approval of the Settlement Agreement, including the data on sales of affected products in Canada, as previously supplied by the Defendants.
- (c) The Second Order shall, among other things:
  - (i) approve the Settlement in respect of Class Members (other than those who opt-out of the Settlement) on the terms and conditions of this Settlement Agreement;
  - (ii) declare that the Settlement Agreement is fair, reasonable and in the best interests of the Class Members;
  - (iii) order and declare that the Releasors have fully and finally released the Released Parties from the Released Claims;
  - (iv) approve the Distribution Protocol;
  - (v) approve the appointment of the Claims Administrator;
  - (vi) reserve the Court’s continuing exclusive jurisdiction over the Parties to administer, supervise, construe and enforce this Settlement Agreement; and
  - (vii) authorize the Parties to bring such motions to the Court for directions as may be required.

- (d) The form of the Second Order shall be substantially in the form attached hereto as **Schedule D**.
- (e) This Settlement Agreement shall only become final on the Effective Date.

**SECTION 4:**  
**SETTLEMENT CLAIMS**

**4.1 Defendants' Obligations**

- (a) This Settlement provides for a claims process for Class Members to make claims for compensation from the Defendants in the form of Cash Payments and a Cy Près Donation. The Defendants' obligation hereunder is to make or fund:
  - (i) the Cash Payments;
  - (ii) the Cy Près Donation;
  - (iii) Class Counsel Fees; and
  - (iv) Administration Expenses.
- (b) In no event shall the total value of the payments by the Defendants towards the Cash Payments, the Cy Près Donation, and Class Counsel Fees, or any excess Administration Expenses greater than CAD \$25,000, exceed CAD \$375,000. The Defendants shall pay a maximum of CAD \$25,000 towards Administration Expenses in addition to the Maximum Settlement Funding with any amount of Administration Expenses greater than CAD \$25,000 being paid from the CAD \$375,000 Maximum Settlement Funding.
- (c) If the value of the total Claims received exceeds the Maximum Settlement Funding, then each Claimant's recovery will be reduced on a pro rata basis.

**SECTION 5:**  
**CASH PAYMENTS**

**5.1 Cash Payment Amounts**

Upon approval of a satisfactory Claim filed by the Claims Deadline, each Class Member may obtain a Cash Payment as follows:

- (a) Class Members who purchased WD RED NAS drives with 2-terabyte capacity (WD20EFAX) during the Class Period will receive CAD \$6 for each drive purchased;
- (b) Class Members who purchased WD RED NAS drives with 3-terabyte capacity (WD30EFAX) during the Class Period will receive CAD \$6 for each drive purchased;
- (c) Class Members who purchased WD RED NAS drives with 4-terabyte capacity (WD40EFAX) during the Class Period will receive CAD \$9 for each drive purchased; and
- (d) Class Members who purchased WD RED NAS drives with 6-terabyte capacity (WD60EFAX) during the Class Period will receive CAD \$9 for each drive purchased.

**5.2 Submitting Claims**

- (a) Class Members may make a claim for Cash Payment by submitting a completed Claim Form online, together with a satisfactory proof of purchase to the Claims Administrator prior to the Claims Deadline.
- (b) Proof of purchase will include one of the following:
  - (i) serial number for the WD RED NAS Drives; or
  - (ii) receipts reflecting the purchase of the WD RED NAS Drives in Canada during the Class Period.

- (c) Claimants should reference their device manuals to locate the serial numbers for installed WD RED NAS Drives.
- (d) The Notice of Settlement Approval and Claims Procedures shall include a link to the Claims Administrator's website, which will include an electronic copy of the Claim Form and information on how to make Claims. All Claims Forms must include the following information in order to be submitted:
  - (i) the Claimant's name;
  - (ii) confirmation that the Claimant is a Canadian resident;
  - (iii) email address; and
  - (iv) proof of purchase of a WD RED NAS Drive as required under Section 5.2(b).

### **5.3 Claims Review Process**

- (a) The Claims Administrator will review each claim to confirm that it includes the proof of purchase and, if the proof of purchase is by way of serial number, confirm that the serial number provided is consistent with the format for WD RED NAS drives as instructed by the Defendants.
- (b) Each week during the Claims Period, the Claims Administrator will audit the top ten percent (10%) highest value Claims to determine whether the Claims contain valid serial numbers or receipts reflecting the purchase of the WD RED NAS Drives in Canada during the Class Period. In order to determine whether the serial numbers are valid, the Claims Administrator will use the Defendants' Warranty Status checker to identify valid serial numbers, which will be provided by the Defendants to the Claims Administrator.
- (c) If the percentage of invalid Claims in any weekly review is greater than five percent (5%) of the claims, the Parties will consult and agree on escalating review rates.

- (d) For valid claims, the Claims Administrator shall make a determination of the amount of the Cash Payment to be issued to each Claimant by the Claims Review Deadline.
- (e) Where Claims are duplicative or otherwise invalid, the Claims Administrator shall reject those claims.
- (f) The Claims Administrator's decision concerning the validity of any particular Claim shall be final and binding. There shall be no right of appeal. .
- (g) The Claims Administrator shall send the Defendants periodic invoices for the costs of the claims administration under this Settlement Agreement. If the Defendants believe the amount charged on any invoice is unreasonably excessive, the Defendants may submit their objections to the Court for resolution and need not pay the disputed amount until the Court has resolved the objections.

#### **5.4 Issuing Cash Payments**

- (a) During the Claims Period, the Claims Administrator shall send an email with an Interac e-transfer for the amount of any Cash Payment to each Claimant whose Claim is approved to the email address provided by the Claimant within thirty (30) days following the Claims Deadline.

#### **5.5 Restrictions**

The right to make a claim for Cash Payment is not assignable or transferable and cannot be claimed by anyone other than the Claimant.

**SECTION 6:**  
**CY PRÈS DONATION**

**6.1 Cy Près Donation**

- (a) If the total value of the sum of the Cash Payments issued to Claimants, Class Counsel Fees and Administration Expenses is **less** than CAD \$187,500, then the Cy Près Donation amount to be distributed to the Law Foundation is the difference between CAD \$187,500 and the sum of the Cash Payments issued to Claimants, Class Counsel Fees and Administration Expenses.
- (b) If the total value of the sum of the Cash Payments, Class Counsel Fees and Administration Expenses is **more** than CAD \$187,500, but less than the Maximum Settlement Funding, then the difference between the two will be distributed by way of Cy Près Donation to the Law Foundation.

**6.2 Cy Près Donation Payment Deadline**

The Defendants will make the Cy Près Donation to the Law Foundation within thirty (30) days of the Claims Review Deadline.

**SECTION 7:**  
**WESTERN DIGITAL WEBSITE DISCLOSURES**

**7.1 Disclosure of Shingled Magnetic Recording Technology in WD RED NAS Drives**

The Defendants will continue to disclose the use of shingled magnetic recording technology on the westerndigital.com product page for all WD RED NAS Drives with shingled magnetic recording technology for two years following the Effective Date.

**SECTION 8:**  
**TERMINATION OF SETTLEMENT AGREEMENT**

**8.1 Right of Termination**

- (a) The Plaintiff and/or the Defendants have the right to terminate this Settlement Agreement in the event that:
  - (i) the Court declines to approve this Settlement Agreement or any material part hereof;
  - (ii) the Court approves this Settlement Agreement in a materially modified form other than as amended by the Parties; or
  - (iii) the Second Order does not become a Final Order.
- (b) If the Plaintiff or the Defendants elect to terminate the Settlement Agreement, a written notice of termination shall be provided. Upon delivery of such written notice, this Settlement Agreement shall be terminated and shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
- (c) Any order, ruling or determination made by the Court with respect to Class Counsel's fees and disbursements shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not constitute any basis for the termination of this Settlement Agreement.

**8.2 Effect of Termination**

- (a) In the event of termination of this Settlement Agreement, all Parties shall be restored to their respective positions in and with respect to the Action immediately prior to the date on which this Settlement Agreement is signed by all Parties.
- (b) All negotiations, statements, and proceedings relating to the Settlement and the Settlement Agreement shall be deemed to be without prejudice to the rights of the

Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

- (c) The Plaintiff, Class Counsel, the Defendants, and Defence Counsel expressly acknowledge that they will not, in any way whatsoever, use the fact or existence of this Settlement Agreement as any form of admission, whether of liability, wrongdoing, or otherwise, of the Defendants or the Plaintiff.

### **8.3 Survival of Provisions After Any Termination**

If this Settlement Agreement is terminated, the provisions of this Settlement Agreement will have no force or effect and all obligations related thereto shall cease immediately.

## **SECTION 9: RELEASES AND DISMISSALS**

### **9.1 Release of Released Parties**

The Parties agree to the following release which shall be included in the Second Order and which shall take effect upon the date the Court's approval of the Settlement Agreement becomes a Final Order.

- (a) In exchange for the settlement benefits hereunder and for other valuable consideration set forth in the Settlement Agreement, the Plaintiff and each Class Member, including their heirs, successors and assigns, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, expressly and irrevocably waives and fully, finally and forever settles and releases all claims, demands, actions, suits and causes of action against the Defendants and/or their directors, officers, employees, lawyers, insurers or agents, whether known or unknown, asserted or unasserted, that any Class Member ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged in the Action which arise from or relate to the use of shingled magnetic recording technology in the

WD RED NAS Drives during the Class Period, excluding claims for personal injury that may arise from use of the WD RED NAS Drives.

- (b) The Plaintiff and Class Members expressly agree that this Release and the Second Order is, will be, and may be raised as a complete defence to, and will preclude any action or proceeding encompassed by this Release.
- (c) The Plaintiff and Class Members shall not now or hereafter institute, maintain, prosecute, assert and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, cause of action and/or any other matters released through this Settlement.
- (d) In connection with the Settlement Agreement, the Plaintiff and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, it is the intention of the Plaintiff and Class Members in executing this Settlement Agreement fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or may have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the subject matter of the Action, except as otherwise stated in this Settlement Agreement.
- (e) Releasors represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Settlement Agreement. Releasors further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Releasors are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values

under the Action. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

- (f) Without in any way limiting its scope, and except to the extent otherwise specified in this Settlement Agreement, this Release covers without limitation, any and all claims for legal fees, taxes, costs, expert fees or consultant fees, interest, or litigation fees, costs or any other fees, costs and/or disbursements incurred by legal counsel, Class Counsel, any other legal counsel, the Plaintiff, Class Members or any other person who claim to have assisted in conferring the benefits under this Settlement upon the Class.
- (g) The Plaintiff, Class Counsel and/or any other legal counsel who receives legal fees and disbursements from this Settlement acknowledge that they have conducted sufficient independent investigation to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.
- (h) Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.
- (i) Releasors hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Settlement Agreement and shall be included in the Second Order.

- (j) Without limiting any other provisions herein, each Class Member who does not opt-out will be deemed by the Settlement Agreement to have completely and unconditionally released and forever discharged the Released Parties from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever, whether known or unknown, that were asserted or could have been asserted in the litigation that is the subject of this Settlement Agreement.
  
- (k) The Parties agree that each Class Member who does not opt-out will be forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, asserting against any of the Defendants, the Released Parties, and/or third-party any claims that relate to or constitute any Released Claims covered by the Settlement Agreement.

## **9.2 Dismissal of Proceedings**

Upon the date of the approval of the Settlement Agreement becomes a Final Order, the Action shall be dismissed with prejudice and without costs as against the Defendants. Class Members shall be deemed to consent to the dismissal of the Action, with prejudice and without costs as against the Defendants.

## **SECTION 10:**

### **CLASS COUNSEL FEES, DISBURSEMENTS AND APPLICABLE TAXES**

#### **10.1 Motion for Approval**

- (a) Class Counsel will bring applications to the Court for approval of Class Counsel Fees, disbursements and any applicable taxes. Such Class Counsel Fees are awarded at the discretion of the Court after hearing from Class Counsel. The Defendants will take no position on Class Counsel Fees, disbursements, or any honourarium for the Plaintiff.

- (b) Class Counsel will neither request of the Court, nor accept an award for fees in an amount that exceeds thirty percent (30%) of the Maximum Settlement Funding and the Defendants will not oppose such request. The approval of this Settlement shall not be contingent upon the approval of Class Counsel Fees.

## **10.2 Payment of Class Counsel Fees**

- (a) Class Counsel Fees shall be paid by the Defendants out of the total Maximum Settlement Funding.
- (b) Within thirty (30) days after Class Counsel obtain the Court's approval of Class Counsel Fees, the Defendants shall transfer the monies so awarded by the Court for payment of Class Counsel Fees as directed by Class Counsel so long as the direction is consistent with the Court's approval of Class Counsel Fees. Class Counsel shall be responsible for directing the payment of Class Counsel Fees among Class Counsel, consultants and experts at their discretion. The Defendants shall have no liability in connection with the direction, transfer, and distribution of the Class Counsel Fees among Class Counsel, or otherwise.
- (c) Class Members who have retained, or in the process of making a claim do retain, lawyers to assist them in making their individual claims to this Settlement shall be solely responsible for the legal fees and expenses of such lawyers.

## **SECTION 11:**

### **NO ADMISSION OF LIABILITY**

#### **11.1 No Admission of Liability**

The Parties agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the

Released Parties or any of them, or of the truth of any of the claims or allegations made in the Action, or in any other pleading filed by the Plaintiff or the Defendants.

## **11.2 No Evidence**

The Parties further agree that, whether or not this Settlement Agreement is finally approved or is terminated, neither this Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

## **SECTION 12: MISCELLANEOUS**

### **12.1 Motions for Directions**

- (a) Class Counsel, Defence Counsel, or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement.
- (b) All motions contemplated by this Settlement Agreement, including applications to the Court for directions, shall be on notice to the Parties.

### **12.2 Released Parties Have No Liability for Administration**

The Released Parties, the Plaintiff and Class Counsel have no liability whatsoever with respect to the administration of the Settlement Agreement.

### **12.3 Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

- (b) the terms “this Settlement Agreement”, “the Settlement Agreement”, “hereof”, “hereunder”, “herein”, “hereto”, and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

#### **12.4 Computation of Time**

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days.
- (b) Only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **12.5 Ongoing Jurisdiction**

The Court shall retain exclusive jurisdiction over the Action commenced British Columbia, the Parties thereto and the Class Counsel Fees in the Action.

#### **12.6 Governing Law**

Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

#### **12.7 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

## **12.8 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

## **12.9 Binding Effect**

Once the Settlement attains the Effective Date, this Settlement Agreement shall be binding upon, and inure to the benefit of the Plaintiff, the Class Members, the Defendants, the Releasers, the Released Parties, Class Counsel, Defence Counsel and the Claims Administrator.

## **12.10 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, emailed, or other electronic form provided that it is duly executed.

## **12.11 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

## **12.12 Dates**

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Court.

### **12.13 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

### **12.14 Recitals**

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

### **12.15 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

### **12.16 Acknowledgments**

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;
- (c) he, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

### **12.17 Authorized Signatories**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

## **12.18 Notice**

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**FOR PLAINTIFF AND FOR CLASS COUNSEL:**

**Slater Vecchio**

PO Box 10445 Pacific Center North  
18<sup>th</sup> Floor, Dunsmuir Street  
Vancouver, BC V7Y 1K4

Saro Turner

Phone: (604) 682 5111

Email: [slt@slatervecchio.com](mailto:slt@slatervecchio.com)

With a copy by email to [mat@godbarrister.com](mailto:mat@godbarrister.com)

**FOR THE DEFENDANT AND DEFENCE COUNSEL:**

**Fasken Martineau DuMoulin LLP**

2900 - 550 Burrard Street  
Vancouver, BC V6C 0A3

Andrew Borrell

Alexandra Mitretodis

Telephone: (604) 631 3131

Email: [aborrell@fasken.com](mailto:aborrell@fasken.com)

Email: [amitretodis@fasken.com](mailto:amitretodis@fasken.com)

**12.19 Date of Execution**

The Parties have executed this Agreement as of the date on the cover page.

**SHELDON IRVING**

Signature of Authorized Signatory:  
Name of Authorized Signatory:



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**Class Counsel**

**WESTERN DIGITAL CORPORATION  
WESTERN DIGITAL CANADA  
CORPORATION**

Signature of Authorized Signatory:  
Name of Authorized Signatory:



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**Andrew Borrell**

**Fasken Martineau DuMoulin LLP  
Defence Counsel**

**Schedule “A”  
WESTERN DIGITAL CLASS ACTION**

**NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

**Read this notice carefully as it may affect your rights.**

**THIS NOTICE IS DIRECTED TO:**

**All persons who are residents of Canada who purchased WD RED NAS Drives in Canada with model numbers WD20EFAX, WD30EFAX, WD40EFAX, and WD60EFAX between February 15, 2019 and April 22, 2020 (“Class Members”).**

**I. Nature of the Class Action**

On May 22, 2020, a proposed class action was commenced against Western Digital Corporation and Western Digital Canada Corporation (collectively referred to as “**Western Digital**”) in the Supreme Court of British Columbia, *Sheldon Irving v. Western Digital Corporation and Western Digital Canada Corporation* (Vancouver Registry, No. S-205402) (the **Action**”).

The Action was brought on behalf of Class Members alleging that the Western Digital changed the technology used in the WD RED NAS Drives from conventional magnetic recording to shingled magnetic recording (“**SMR**”) and misled consumers by not informing them of the change in breach of sale of goods legislation, consumer protection legislation, section 52 of the *Competition Act*, RSC 1985, c. C-34, and section 380(2) of the *Criminal Code*, RSC 1985, c C-46.

The Defendants deny these allegations, deny that SMR is inferior technology, or that it did anything wrong in changing the technology. The Defendants contend that its SMR-based WD Red NAS drives were designed and extensively tested for use in the applications for which they were marketed and are suitable for use in NAS devices employed in appropriate applications and workloads.

**II. Settlement**

The parties have reached a settlement of the Action, without an admission of liability on the part of Western Digital, subject to approval by the Supreme Court of British Columbia (“**Settlement**” or “**Settlement Agreement**”).

**A. Overview**

If this settlement is approved, Class Members will be eligible to make a claim for cash payments for CAD \$6 for each 2-terabyte (WD20EFAX) and 3-terabyte (WD30EFAX) capacity WD RED NAS Drives and CAD \$9 for each 4-terabyte (WD40EFAX) and 6-terabyte (WD60EFAX) capacity WD RED NAS Drives purchased in Canada between February 15, 2019 and April 22, 2020 (“**Cash Payments**”).

Western Digital is obliged to fund up to CAD \$375,000 for the Cash Payments, Class Counsel fees, taxes and disbursements, and a charitable donation paid for the benefit of the Class to Law Foundation plus notice and administration costs up to a maximum of CAD \$25,000. For more information about how to submit a claim, please visit ♦.

Class Counsel will be seeking legal fees, taxes and disbursements of an amount that does not exceed 30% of CAD \$375,000. Class Counsel is also requesting an honourarium for the representative plaintiff of ♦. The application for court approval of Class Counsel's fee request and the honourarium will be heard at the same time as the applications for court approval of the Settlement.

This Settlement resolves the Action for all Class Members as against Western Digital. If the settlement is approved, a full release of all claims in the Action will be granted to Western Digital. This Settlement represents a resolution of disputed claims and Western Digital does not admit any wrongdoing or liability.

### **B. Consent Certification and Upcoming Approval Hearing**

The Class Action has been certified by the Supreme Court of British Columbia by consent order of the Honourable Mr. Justice Branch on ♦, 2021. The certification is conditional on final approval being granted by the Court. Sheldon Irving has been appointed the representative plaintiff on behalf of the Class. Slater Vecchio LLP and Mathew P Good Law Corporation have been appointed "**Class Counsel**".

The Settlement remains subject to approval by the Court. An application for approval of the Settlement will be heard by the Court in the City of Vancouver, at 800 Smithe Street, on ♦ at ♦. At this hearing, the Court will determine whether the Settlement is fair, reasonable and in the best interests of the Class Members.

Class Members who do not oppose the settlement are not required to appear at the approval hearings or take any other action at this time. Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

At the approval hearings, the Court will consider objections to the Settlement by the Class Members if the objections are submitted in writing, by prepaid mail or email to either of the Class Counsel's addresses below postmarked **no later than 10 days before the first approval hearing**.

A written objection should include the following information:

- a) the objector's name, current mailing address, telephone number, and email address;
- b) proof of class membership in the form of a receipt or similar;
- c) the reason why the objector believes that they are a Class Member;
- d) a brief statement of the nature of and reasons for the objection; and
- e) whether the objector intends to appear at the hearing in person or by counsel, and, if by counsel, the name, address, telephone number, and email address of counsel.

### **C. Questions about the Settlement**

This notice contains only a summary of the Settlement and Class Members are encouraged to review the complete Settlement Agreement. If you have questions that are not answered online, please contact the appropriate Class Counsel identified below.

The law firms Good Barrister and Slater Vecchio represent Class Members in the Action. They can be reached at:

#### **Slater Vecchio**

PO Box 10445 Pacific Center North  
18<sup>th</sup> Floor, Dunsmuir Street  
Vancouver, BC V7Y 1K4

Ryan Matheuszik

Phone: ◆

Email: ◆

### **D. Interpretation**

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement including the Schedules to the Settlement Agreement, the terms of the Settlement Agreement and/or the Court orders shall prevail.

### **III. Opt-Out Procedure**

If you do not want to participate in the Action, you must complete and send an Opt-Out Form by ◆ (the “**Opt-Out Deadline**”) to Class Counsel at the addresses above.

If you opt-out by the Opt-Out Deadline, you may be able to bring your own lawsuit against Western Digital, but you will not be entitled to participate in the Settlement.

Opt-Out Forms are available at ◆ or by contacting Class Counsel at the contact information provided above. All Class Members will be bound by the terms of the Settlement, unless they opt-out of this Class Action.

### **IV. Additional Information**

This notice is given to you on the basis that you may be a Class Member whose rights could be affected by the Action. This notice should not be understood as an expression of any opinion of the Courts as to the merits of any claim or defences asserted in the Action. Its sole purpose is to inform you of the Action so that you may decide what steps to take in relation to it.

**INQUIRIES SHOULD NOT BE DIRECTED TO THE COURTS.**

**THIS NOTICE HAS BEEN APPROVED BY THE SUPREME COURT OF  
BRITISH COLUMBIA**

**Schedule “B”  
WESTERN DIGITAL CLASS ACTION**

**NOTICE OF SETTLEMENT APPROVAL AND CLAIMS PROCEDURES**

**Read this notice carefully as it may affect your rights.**

**THIS NOTICE IS DIRECTED TO:**

**All persons who are residents of Canada who purchased WD RED NAS Drives in Canada with model numbers WD20EFAX, WD30EFAX, WD40EFAX, and WD60EFAX between February 15, 2019 and April 22, 2020 (“Class Members”).**

**I. Nature of the Class Action**

On May 22, 2020, a proposed class action was commenced against Western Digital Corporation and Western Digital Canada Corporation (collectively referred to as “**Western Digital**”) in the Supreme Court of British Columbia, *Sheldon Irving v. Western Digital Corporation and Western Digital Canada Corporation* (Vancouver Registry, No. S-205402) (the **Action**”).

The Action was brought on behalf of Class Members alleging that the Western Digital changed the technology used in the WD RED NAS Drives from conventional magnetic recording to shingled magnetic recording (“**SMR**”) and misled consumers by not informing them of the change in breach of sale of goods legislation, consumer protection legislation, section 52 of the *Competition Act*, RSC 1985, c. C-34, and section 380(2) of the *Criminal Code*, RSC 1985, c C-46.

The Defendants deny these allegations, deny that SMR is inferior technology, or that it did anything wrong in changing the technology. The Defendants contend that its SMR-based WD Red NAS drives were designed and extensively tested for use in the applications for which they were marketed and are suitable for use in NAS devices employed in appropriate applications and workloads.

**II. Settlement**

The parties have reached a settlement of the Action, without an admission of liability on the part of Western Digital which has been approved by the Supreme Court of British Columbia (“**Settlement**” or “**Settlement Agreement**”).

Class Members are eligible to make a claim for cash payments for CAD \$6 for each 2-terabyte (WD20EFAX) and 3-terabyte (WD30EFAX) capacity WD RED NAS Drives and CAD \$9 for each 4-terabyte (WD40EFAX) and 6-terabyte (WD60EFAX) capacity WD RED NAS Drives purchased in Canada between February 15, 2019 and April 22, 2020 (“**Cash Payments**”).

Western Digital is obliged to fund up to CAD \$375,000 for the Cash Payments, Class Counsel fees, taxes and disbursements, and a charitable donation paid for the benefit of the Class to Law Foundation plus notice and administration costs up to a maximum of CAD \$25,000. For more information about how to submit a claim, please visit ♦.

This Settlement resolves the Action for all Class Members as against Western Digital. A full release of all claims in the Action has been granted to Western Digital. This Settlement represents a resolution of disputed claims and Western Digital does not admit any wrongdoing or liability.

On ♦, 2021, the Honourable Mr. Justice Branch of the Supreme Court of British Columbia approved the settlement agreement as being fair, reasonable and in the best interests of class members. He also approved Class Counsel fees of ♦, disbursements of ♦, and an honourarium to the representative plaintiff of ♦.

### **III. Claims Process**

#### **A. Submitting a Claim**

To qualify for a cash payment, you must submit a completed claim form to the Claims Administrator online at: ♦

Your claim form must include the following information:

- a) your name;
- b) your email address; and
- c) serial numbers and receipt reflecting the purchase of WD RED NAS Drives with model numbers WD20EFAX, WD30EFAX, WD40EFAX, and/or WD60EFAX purchased in Canada between February 15, 2019 and April 22, 2020.

The right to make a claim for cash payment is not assignable or transferable and cannot be claimed by anyone other than the claimant

#### **Your claim's form must be submitted by ♦.**

The Claims Administrator shall review the claims forms by ♦ to either approve or reject claims.

The Claims Administrator's decision concerning the validity of any particular Claim shall be final and binding. There shall be no right of appeal.

#### **B. Issuing Cash Payments**

The Claims Administrator will send an email with an Interact e-transfer for the amount of any cash payments to each claimant whose claim is approved to the email address provided by each claimant within thirty (30) days following the claims deadline.

#### **C. Questions about the Settlement**

This notice contains only a summary of the Settlement and Class Members are encouraged to review the complete Settlement Agreement. If you have questions that are not answered online,

please contact the appropriate Class Counsel identified below. The law firms Good Barrister and Slater Vecchio represent Class Members in the Action. They can be reached at:

**Slater Vecchio**

PO Box 10445 Pacific Center North  
18<sup>th</sup> Floor, Dunsmuir Street  
Vancouver, BC V7Y 1K4

Ryan Matheuszik

Phone: ◆

Email: ◆

**D. Interpretation**

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement including the Schedules to the Settlement Agreement, the terms of the Settlement Agreement and/or the Court orders shall prevail.

**IV. Additional Information**

This notice is given to you on the basis that you may be a Class Member whose rights could be affected by the Action. This notice should not be understood as an expression of any opinion of the Courts as to the merits of any claim or defences asserted in the Action. Its sole purpose is to inform you of the Action so that you may decide what steps to take in relation to it.

**INQUIRIES SHOULD NOT BE DIRECTED TO THE COURTS.**

**THIS NOTICE HAS BEEN APPROVED BY THE SUPREME COURT OF  
BRITISH COLUMBIA**

**Schedule “C”**

No. VLC-S-S-205402  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**SHELDON IRVING**

Plaintiff

AND:

**WESTERN DIGITAL CORPORATION AND  
WESTERN DIGIAL CANADA CORPORATION**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION**

BEFORE ) THE HONOURABLE JUSTICE BRANCH )  
) )  
) )  
) )  
) )

ON THE APPLICATION OF the Plaintiff coming on for hearing at ♦ on ♦ and on hearing ♦ and ♦;

BY CONSENT THIS COURT ORDERS that:

1. All capitalized terms in this Order have the same meaning as defined in such Settlement Agreement attached as **Schedule “A”** to this Order.
2. The Plaintiff’s application to certify this action as a class proceeding pursuant to section 4 of the *Class Proceedings Act*, RSBC 1996, c 50 is hereby granted for settlement purposes.
3. The members of the class shall consist of:

All persons in Canada who purchased WD RED NAS Drives in Canada with model numbers WD20EFAX, WD30EFAX, WD40EFAX, and WD60EFAX between February 15, 2019 and April 22, 2020.

(the “**Class**” or “**Class Members**”)

4. Sheldon Irving is appointed as the representative plaintiff for the Class.
5. The Class alleged that the Defendants changed the technology used in the WD RED NAS Drives from conventional magnetic recording to shingled magnetic recording (“**SMR**”) and misled consumers by not informing them of the change in breach of sale of goods legislation, consumer protection legislation, the common law of unjust enrichment, section 52 of the *Competition Act*, RSC 1985, c. C-34, and section 380(2) of the *Criminal Code*, RSC 1985, c C-46.
6. The relief sought by the Class was an accounting and restitution (or in the alternative, disgorgement), damages for breach of statutory warranty, damages under the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (“**BPCPA**”), declaratory relief under section 172(1)(a) of the BPCPA, an injunction under section 171(1)(b) of the BPCPA to restrain further breaches of the BPCPA, pre-judgement interest, and post-judgement interest.
7. The following common issue is certified:  
  
Were the Defendants under a positive duty to inform customers of the change from conventional magnetic recording to shingled magnetic recording in the manufacture of WD RED NAS Drives?
8. Any Class Member resident in Canada who wishes to opt-out of the action must do so by sending a written completed opt-out form to Class Counsel on or before the date that is thirty (30) days from the date of first publication of notice.
9. The Defendants expressly reserve their rights to contest certification of any other related or unrelated proceedings and their rights to defend on the merits any other related or unrelated proceedings.
10. The method of disseminating notice as provided for in the Settlement Agreement is approved.
11. The form of the notice as attached at Schedule “**C**” to the Settlement Agreement is approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of

Party  Lawyers for Plaintiff

---

Mathew Good

---

Signature of

Party  Lawyer for the Defendants

---

Andrew Borrell

BY THE COURT

---

REGISTRAR

**Schedule “D”**

No. VLC-S-S-205402  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**SHELDON IRVING**

Plaintiff

AND:

**WESTERN DIGITAL CORPORATION AND  
WESTERN DIGIAL CANADA CORPORATION**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION**

) )  
) )  
BEFORE ) THE HONOURABLE JUSTICE BRANCH ) ◆  
) )  
) )

ON THE APPLICATION OF the Plaintiff coming on for hearing at ◆ on ◆ and on hearing ◆ and ◆;

BY CONSENT THIS COURT ORDERS that:

1. The terms of the settlement reached between the parties as set out in the Settlement Agreement attached as Schedule “A” to this Order are hereby approved and that all capitalized terms in this Order have the same meaning as defined in such Settlement Agreement.
2. The Settlement Agreement is fair, reasonable and in the best interests of the Class Members.
3. The Settlement Agreement is approved pursuant to section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its term.

4. The Releasors, other than those who opt-out of the Settlement, have fully and finally released the Released Parties from the Released Claims pursuant to the following terms:
- a) In exchange for the settlement benefits and for other valuable consideration set forth in the Settlement Agreement, the Plaintiff and each Class Member, including their heirs, successors and assigns, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, expressly and irrevocably waives and fully, finally and forever settles and releases all claims, demands, actions, suits and causes of action against the Defendants and/or its directors, officers, employees, lawyers, insurers or agents, whether known or unknown, asserted or unasserted, that any Class Member ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged in the Action which arise from or relate to the use of shingled magnetic recording technology in the WD RED NAS Drives during the Class Period, excluding claims for personal injury that may arise from use of the WD RED NAS Drives..
  - b) The Plaintiff and Class Members expressly agree that the Release in the Settlement Agreement is, will be, and may be raised as a complete defence to, and will preclude any action or proceeding encompassed by the Settlement Agreement.
  - c) The Plaintiff and Class Members shall not now or hereafter institute, maintain, prosecute, assert and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, cause of action and/or any other matters released in the Settlement Agreement.
  - d) In connection with the Settlement Agreement, the Plaintiff and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Settlement Agreement. Nevertheless, it is the intention of the Plaintiff and Class Members in executing the Settlement Agreement fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or may have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the subject matter of the Action, except as otherwise stated in the Settlement Agreement.
  - e) Releasors represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Releasors further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the

Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Releasors are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

- f) Without in any way limiting its scope, and except to the extent otherwise specified in the Settlement Agreement, the Settlement Agreement covers without limitation, any and all claims for legal fees, taxes, costs, expert fees or consultant fees, interest, or litigation fees, costs or any other fees, costs and/or disbursements incurred by legal counsel, Class Counsel, any other legal counsel, the Plaintiff, Class Members or any other person who claim to have assisted in conferring the benefits under the Settlement upon the Class.
  - g) The Plaintiff, Class Counsel and/or any other legal counsel who receives legal fees and disbursements from the Settlement acknowledge that they have conducted sufficient independent investigation to enter into the Settlement Agreement and, by executing the Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in the Settlement Agreement.
  - h) Nothing in the Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.
  - i) Releasors hereby agree and acknowledge that the provisions of the Release in the Settlement Agreement together constitute an essential and material term of the Settlement Agreement and shall be included in the Order.
  - j) Without limiting any other provisions herein, each Class Member who does not opt-out will be deemed by the Settlement Agreement to have completely and unconditionally released and forever discharged the Released Parties from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever, whether known or unknown, that were asserted or could have been asserted in the litigation that is the subject of the Settlement Agreement.
  - k) The Parties agree that each Class Member who does not opt-out will be forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, asserting against any of the Defendants, the Released Parties, and/or third-party any claims that relate to or constitute any Released Claims covered by the Settlement Agreement.
5. The form of the notice as attached at Schedule “**B**” to the Settlement Agreement is approved.

6. The Distribution Protocol attached at Schedule “C” is approved.
7. RicePoint is appointed as Claims Administrator.
8. This Court retains continuing exclusive jurisdiction over the parties to administer, supervise, construe and enforce this Settlement Agreement.
9. The Parties may bring motions to the Court for directions as may be required.
10. The Action will be dismissed without costs following the full implementation of the terms established by the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of

Party  Lawyer for the Plaintiff

---

Mathew Good

---

Signature of

Party  Lawyer for the Defendants

---

Andrew Borrell

BY THE COURT

---

REGISTRAR