

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 www.westerndigitalclassaction.ca.

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 **\$1,500**. 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 October 15, 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 December 15, 2021 at 9 am. 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
18th Floor, Dunsmuir Street
Vancouver, BC V7Y 1K4

Attention: Steven Nguyen re Western Digital
Phone: 604.648.3571
Email: snguyen@slatervecchio.com

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 November 23, 2021 (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 www.westerndigitalclassaction.ca 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**