

EXHIBIT 2

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 Executive Officer/Clerk of Court,
 By J. Nunez, Deputy Clerk

Attorneys for Plaintiff SALVADOR CALDERA, on behalf of
 himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SALVADOR CALDERA, on behalf of
 himself and all others similarly situated,

Plaintiff,

v.

PNY TECHNOLOGIES, INC.; DPI, INC.;
 DIGITAL PRODUCTS INTERNATIONAL,
 INC.; and DOES 1 to 50, inclusive,

Defendants.

Case No. **25STCV18066**

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

- (1) Violation of California Business & Professions Code section 17200, *et seq.* (Unfair Competition Law)
- (2) Violation of California Business & Professions Code section 17500, *et seq.* (False Advertising Law)
- (3) Violation of California's Consumers Legal Remedies Act, California Civil Code section 1750, *et seq.*
- (4) Breach of Contract
- (5) Breach of Implied Covenant of Good Faith and Fair Dealing
- (6) Breach of Express or Implied Warranty
- (7) Deceit
- (8) Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiff SALVADOR CALDERA (hereinafter, “Plaintiff”) complains of Defendants PNY
 2 TECHNOLOGIES, INC., a Delaware corporation; DPI, INC., a Missouri corporation doing
 3 business as DIGITAL PRODUCTS INTERNATIONAL, INC.; DIGITAL PRODUCTS
 4 INTERNATIONAL, INC., a Delaware corporation; and Does 1 to 50, inclusive, (together,
 5 “Defendants”) as follows:

6 NATURE OF ACTION

7 1. This action seeks redress for Defendants’ manufacturing, advertising, marketing, and
 8 sale of their USB flash drives, also known as thumb drives, data sticks, JumpDrives, pen drives, gig
 9 sticks, flash drives, disk keys, memory sticks, and USB sticks (hereinafter referred to as “flash
 10 drives”) that provide less than the advertised amount of storage capacity.

11 2. California prohibits the advertising of products with the intent not to sell them as
 12 advertised. California also prohibits unlawful, unfair, and deceptive business practices in the
 13 advertising and sale of consumer products.

14 3. For at least the past four years and continuing to the present, Defendants falsely
 15 advertised the storage capacity of their USB flash drives. The front label of the USB flash drives
 16 advertises the purported storage capacity, e.g., 16, 32, 64, 128, 256, and 512 GB, and 1 Terabyte.
 17 This claim is made in very large, bold font at the top of the front of the package without any
 18 qualification. A reasonable customer purchasing Defendants’ products would believe that he or she
 19 is receiving a USB flash drive that delivers at least 32 GB of storage.

20 4. In reality, the vast majority of users who purchase Defendants’ flash drives actually
 21 receive less than the advertised amount. For example, Plaintiff purchased a 32 GB Memorex flash
 22 drive but upon inserting it into his computer learned that it only had 28.8 GB of storage capacity.

23 5. Defendants knew or should have known that their customers would not receive the
 24 advertised amount of storage but continued to make this misrepresentation on each and every
 25 product label.

26 6. On behalf of himself and other similarly situated customers, Plaintiff seeks redress for
 27 this false representation, including damages, restitution, and injunctive relief.

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PARTIES

7. PNY Technologies, Inc. is a Delaware corporation that has its headquarters in Parsippany, New Jersey.

8. DPI, Inc. is a Missouri corporation with its principal place of business in Saint Louis, Missouri.

9. Digital Products International, Inc., is a Delaware corporation that, upon information and belief, has its headquarters in Saint Louis, Missouri.

10. At all times mentioned herein Plaintiff was and is a resident of the State of California.

11. The true names and capacities, whether individual, corporate, associate, or whatever else, of the defendants sued herein as Does 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein as Does is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of the defendants designated herein as Does when their identities become known.

12. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the employee, agent, partner, alter-ego, and/or joint venturer of the other defendants; that defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto; and that the acts of each defendant are legally attributable to the other defendants.

13. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5 because the obligations giving rise to liability occurred in the County of Los Angeles, State of California.

BACKGROUND

14. Defendants manufacture and sell flash drives to customers throughout the United States.

15. A flash drive is a small, portable storage device that allows users to store digital content externally from the hard drive of their computers or other electronic devices and can be

1 written and rewritten according to the needs of the user.¹ Defendants' flash drives that are the
2 subject of this lawsuit connect to these electronic devices through a USB Type-A plug.²

3 16. Flash drives are sold based on the amount of storage capacity they contain. The more
4 storage capacity, the higher the price.

5 17. Consumers prefer flash drives with greater storage capacity because they can store
6 more data on such devices, typically without any noticeable increase in the physical size of the flash
7 drive.

8 18. Defendants advertise and sell their Memorex flash drives with the following storage
9 capacities: 16 GB, 32 GB, 64 GB, 128 GB, 256 GB, and 512 GB, and 1 Terabyte.³

10 19. A byte is the amount of storage required to store a single character of text.⁴ In
11 common parlance, a GB means gigabyte, which is defined as 1024 megabytes or 1,073,741,824
12 bytes.

13 20. This was the original technical definition of gigabyte (GB) that arose in computing
14 and how all computer operating systems including Windows and Mac originally defined the term
15 and abbreviation. It is still the definition used by the predominant Microsoft Windows operating
16 system, which comprises 97 percent of all computer users. Consumers in turn understand the term
17 and abbreviation as reflected by their operating system, that is, the vast majority of customers
18 understand that gigabyte (GB) means 1024 megabytes or 1,073,741,824 bytes.

19 21. As a result of this common usage, every major dictionary (which defines words
20 descriptively based on actual usage rather than prescriptively) defines gigabyte in the same way,
21 i.e., as 1024 megabytes or 1,073,741,824 bytes.⁵

22 22. Defendants package their flash drives to advertise the amount of available storage
23 capacity on the front of the package, such as 32 GB. The statement of available storage capacity is
24 prominently displayed on the front of the package in large bold letters, much larger than the font

25 ¹ <https://www.lifewire.com/what-is-a-flash-drive-2625794> (last accessed March 15, 2024).

26 ² *Id.*

27 ³ <https://www.pny.com/consumer/view-all-products/usb-flash-drives> (last accessed March 27, 2024).

28 ⁴ <https://www.lifewire.com/terabytes-gigabytes-amp-petabytes-how-big-are-they-4125169> (last accessed March 15, 2024).

⁵ <https://www.merriam-webster.com/dictionary/gigabyte> (last accessed March 7, 2024);

<https://www.dictionary.com/browse/gigabyte> (last accessed April 9, 2024); American Heritage College Dictionary (4th ed. 2010), s.v.

size of other text on the package, including the brand name.



Image 1: Front label of Defendants' Memorex Flash Drive

23. Defendants also advertise their Memorex flash drives on third-party websites sites such as Amazon, Target.com, and Walmart.com in the same manner: displaying the number of purported GB in large font without any accompanying disclaimer or clarification relating to Defendants usage of the term or abbreviation (not even in the fine print), as well as the product's purported compatibility with PCs.

24. Consumers understand these labeling statements to mean that there is at least 32 GB of memory available for use by the consumer according to how their operating systems measures storage capacity. Defendants do not include any disclaimers or other qualifying language on the front label to indicate that consumers will receive less than the advertised amount or to dispel any confusion regarding its use of the term.

25. Defendants explicitly advertise that their flash drives are compatible with Windows operating systems.

26. Defendants' Memorex flash drives, however, do not deliver the storage capacity advertised on the front label; instead, they contain several gigabytes less than the advertised amount when inserted into a computer running a Windows operating system. For example, a 32 GB flash

1 drive actually provides only 29.8 GB or less of storage capacity. This disparity becomes greater as
2 the flash storage capacity increases. In short, Defendants overstate the amount of memory available
3 to the consumer (i.e., they overstate the amount of memory which the consumer can use to store his
4 or her data).

5 27. Nevertheless, Defendants continued to advertise their Memorex flash drives in the
6 manner described above, without any qualification or explanation on the front of the package or on
7 the websites where such products are sold.⁶

8 28. Consumers like Plaintiff do not discover that their storage devices have less than the
9 represented amount until after they purchase the product and start using it.

10 29. The vast majority of consumer electronic products run Windows operating systems.
11 Defendants knew or reasonably should have known that their flash drives are primarily used by
12 Windows users and therefore would not receive the advertised amount of storage capacity.

13 30. Defendants should have also known that while more recent Mac operating systems
14 now measure storage capacity differently from Windows, Apple computers no longer include a
15 USB-A port that would allow customers to insert Defendants' Memorex flash drives directly, thus
16 further proving that Defendants' flash drives are postured toward Windows users.

17 31. Moreover, by representing that the flash drives are compatible with Windows
18 operating systems, Defendants led consumers to understand that the flash drives delivered the
19 represented storage capacity according to Windows specifications, i.e., that they provided 32 GB of
20 storage as measured by Windows operating systems.

21 32. Additionally, regardless of operating system, the Memorex flash drives never
22 provide the represented amount of storage capacity because, upon information and belief, some of
23 the storage capacity is used for internal functions or otherwise inaccessible, a fact that is also never
24 disclosed to customers. For example, when a new Memorex drive is inserted into a computer, the
25 drive already contains a certain amount of "used space" or "inaccessible space," and this is true even
26 after the flash drive has been reformatted.

27 ⁶ See, e.g., <https://www.amazon.com/Memorex-64GB-Flash-Drive-USB/dp/B083G72FZX> (last visited on May 13,
28 2024); <https://www.target.com/p/memorex-32gb-flash-drive-usb-2-0-red-3202003221/-/A-53360881#lnk=sametab>
(last visited on May 13, 2024).

1 33. Reasonable consumers are deceived by this conduct in that they believe that they are
 2 paying for greater storage capacity than Defendants' flash drives provide, and they have suffered
 3 damages as a result.

4 34. Plaintiff purchased a 32 GB USB flash drive from a Target store in Los Angeles,
 5 California on or around October 23, 2023. Plaintiff saw the representation about storage capacity
 6 on the front of the package and purchased the product believing that it would provide 32 GB of
 7 storage. However, when Plaintiff inserted the flash drive into his computer, there were fewer than
 8 32 GB of available storage.

9 35. On around May 8, 2024, Plaintiff purchased a 32 GB flash drive on Target.com.
 10 Memorex advertised the flash drive on the website as having 32 GB of storage and said it was
 11 compatible with PCs and did not provide any clarifying language regarding the storage capacity and
 12 no disclaimer indicating that he would receive less than the stated capacity. When Plaintiff inserted
 13 the flash drive into his computer, however, there were fewer than 32 GB of storage.

14 **CLASS ACTION ALLEGATIONS**

15 36. Plaintiff brings this action as a class action pursuant to California Code of Civil
 16 Procedure § 382 on behalf of the following class:

17 **Class:** All persons in California who purchased a Memorex USB
 18 flash drive within the longest applicable limitations period.

19 37. Members of the class, as described above, will be referred to as "class members."
 20 Excluded from the class are: (1) Defendants, any entity or division in which any Defendants have
 21 a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and
 22 (2) the judge to whom this case is assigned and the judge's staff and members of their immediate
 23 family. Plaintiff reserves the right to amend the above class and to add subclasses as appropriate
 24 based on investigation, discovery, and the specific theories of liability.

25 38. This action has been brought and may properly be maintained as a class action under
 26 California Code of Civil Procedure 382 because there is a well-defined community of interest in the
 27 litigation and the class members are easily ascertainable.

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1 **A. Numerosity**

2 39. Although the precise number of class members has not been determined at this time,
3 Plaintiff estimates that the class includes thousands of members and that the identity of such persons
4 is readily ascertainable. Therefore it is reasonable that the class members are so numerous that
5 joinder is impracticable, and the disposition of their claims in a class action will provide substantial
6 benefits to the parties and the Court.

7 **B. Common Questions Predominate**

8 40. There are questions of law and fact common to the class that predominate over any
9 questions affecting only individual putative class members. Thus proof of a common set of facts
10 will establish the right of each class member to recovery. These common questions of law and fact
11 include but are not limited to the following:

- 12 a. Whether Defendants unfairly, deceptively, unlawfully, and/or unconscionably
13 marketed, advertised, and sold their USB flash drives as having a greater storage
14 capacity than is actually available on the device;
- 15 b. Whether Defendants breached the terms of their contract with USB flash drive
16 purchasers;
- 17 c. Whether Defendants adequately, conspicuously, or adequately disclosed to
18 consumers the actual available storage capacity of their USB flash drives;
- 19 d. Whether Defendants had a duty to disclose the actual available storage capacity on
20 the front of the package;
- 21 e. Whether Defendants violated the Consumers Legal Remedies Act (CLRA), Cal.
22 Civ. Code § 1770(a)(9) by advertising the Memorex USB flash drives with the
23 intent not to sell it as advertised;
- 24 f. Whether Defendant violated section 1770(a)(5) of the CLRA by representing that
25 the USB flash drives have characteristics, ingredients, uses, benefits, or quantities
26 that they do not have;
- 27 g. Whether Defendant violated section 1770(a)(7) of the CLRA by representing that
28 the USB flash drives are of a particular standard, quality, or grade, or that goods

are of a particular style or model when they are of another;

- h. Whether Defendants violated California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* and FAL, Cal. Bus. & Prof Code § 17500, *et seq.* by deceptively marketing, advertising , and selling their USB flash drives;
- i. Whether Defendants intentionally or, alternatively, negligently represented the storage capacity of their USB flash drives;
- j. Whether Defendants breached their contracts with consumers to provide a flash drive with the specified storage capacity;
- k. Whether Defendants breached its express or implied warranties made to consumers by not providing flash drives with the warranted storage capacity;
- l. Whether Defendants were unjustly enriched by selling USB flash drives through their business practices;
- m. Whether Defendants' conduct described herein entitles Plaintiff and class members to actual, compensatory, statutory, and punitive damages; and
- n. Whether Defendants' conduct described herein violates Cal. Bus. & Prof. Code §§ 17200, *et seq.*, entitling Plaintiff and class members to equitable relief.

C. Typicality

41. Plaintiff's claims are typical of the claims of class members because Defendants manufactured, advertised, marketed, and sold their USB flash drives but failed to comply with California's consumer protection law and common law. Plaintiff and each class member sustained similar injuries arising out of Defendant's conduct in violation of law. The injuries of each class member were caused directly by Defendants' wrongful conduct. In addition, the factual underpinning of Defendants' misconduct is common to all class members and represents a common thread of misconduct resulting in injury to all class members. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the class members and are based on the same legal theories.

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1 **D. Adequacy**

2 42. Plaintiff will fairly and adequately represent and protect the interests of class
3 members. Counsel who represent Plaintiff and putative class members are experienced and
4 competent in litigating consumer class actions.

5 **E. Superiority of Class Action**

6 43. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of putative class members is not practicable,
8 and questions of law and fact common to class members predominate over any questions affecting
9 only individual putative class members. Each class member has been damaged and is entitled to
10 recovery as a result of the violations alleged herein. Moreover, because the damages suffered by
11 individual class members may be relatively small, the expense and burden of individual litigation
12 would make it difficult or impossible for individual class members to redress the wrongs done to
13 them, while an important public interest will be served by addressing the matter as a class action.
14 Class action treatment will allow those persons similarly situated to litigate their claims in the
15 manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
16 unaware of any difficulties in managing this case that should preclude class action.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF THE CAL. BUS. & PROF. CODE § 17200, *et seq.***

19 44. Plaintiff hereby incorporates by reference the allegations contained in this
20 Complaint.

21 45. California's Unfair Competition Law ("UCL"), California Business & Professions
22 Code § 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in
23 commercial markets for goods and services. The UCL prohibits any unlawful, unfair, or fraudulent
24 business act or practice. A business practice need only meet one of the three criteria to be considered
25 unfair competition.

26 46. The UCL defines unfair business competition to include any "unlawful, unfair or
27 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal
28 Bus. & Prof. Code § 17200.

1 47. A business act or practice is “unfair” under the Unfair Competition Law if the
2 reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the
3 harm to the alleged victims.

4 48. Defendants violated the unfair prong of the UCL by selling their USB flash drives to
5 consumers by mispresenting the amount of storage capacity that the devices had. Plaintiff and other
6 consumers were injured by the loss of money because they would not have purchased the flash drive
7 had they known of its inferior capacity or would have paid less for the product commensurate with
8 its actual capacity.

9 49. The gravity of the harm to members of the putative class resulting from these unfair
10 acts and practices outweighs the reasons, justifications, or motives of Defendants. Defendants
11 lacked any justification for failing to disclose the true storage capacity of the flash drives to
12 consumers. Through their unfair acts and practices, Defendants improperly obtained money from
13 Plaintiff and the putative class. Plaintiff requests that Defendants restore this money to Plaintiff and
14 all class members.

15 50. A business act or practice is “fraudulent” under the UCL if it is likely to deceive
16 members of the consuming public.

17 51. Defendants’ advertising of their flash drives with a greater storage capacity than they
18 actually have deceived their customers into buying products that they would have paid less for. As
19 a result, customers, including Plaintiff, have reasonably perceived that they would have a greater
20 amount of storage capacity to use on their flash drives than they actually did. Plaintiff and other
21 customers relied on Defendants’ misleading and deceptive representations when purchasing
22 Defendants’ flash drives.

23 52. As a result of the foregoing conduct, Defendants have been unjustly enriched at the
24 expense of Plaintiff and the putative class. Defendants have been unjustly enriched by obtaining
25 revenues and profits that they would not otherwise have obtained absent their false, misleading, and
26 deceptive conduct.

27 53. Through their fraudulent acts and practices, Defendants have improperly obtained
28 money from Plaintiff and the putative class. Plaintiff requests that this Court order Defendants to

1 restore this money to Plaintiff and the putative class and to enjoin Defendant from continuing to
2 violate the UCL.

3 54. An unlawful business practice is anything that can properly be called a business
4 practice and that at the same time is forbidden by law. A business act or practice is “unlawful”
5 under the UCL if it violates any other law.

6 55. Defendants’ conduct is unlawful under the CLRA, Cal. Civ. Code §§ 1770(a)(5)
7 (prohibiting “[r]epresenting that goods or services have sponsorship, approval, characteristics,
8 ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship,
9 approval, status, affiliation, or connection that the person does not have”); 1770(a)(7)(prohibiting
10 “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods
11 are of a particular style or model, if they are of another”), 1770(a)(9) (prohibiting “[a]dvertising
12 goods or services with intent not to sell them as advertised”), and the common law as described
13 throughout this complaint.

14 56. As described above, Defendants have violated the unlawful prong of the UCL by
15 violating the CLRA and common law by advertising and selling their USB flash drives with less
16 storage capacity than they actually have available.

17 57. Defendants’ advertising of their USB flash drives at a greater storage capacity than
18 they actually have available violates Cal. Bus. & Prof. Code § 17500, which outlaws untrue or
19 misleading advertising, as described in greater detail hereinbelow.

20 58. As a result, Defendants have been unjustly enriched at the expense of Plaintiff and
21 members of the proposed class. Defendants have obtained revenues and profits that they would not
22 otherwise have obtained as a result of their false, deceptive, and misleading conduct.

23 59. Pursuant to California Business & Professions Code section 17203, Plaintiff seeks
24 equitable relief, including money unlawfully obtained from Plaintiff and the putative class and an
25 order enjoining Defendants from engaging in the unfair, fraudulent, and unlawful conduct described
26 above.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW,**

3 **BUS. & PROF. CODE § 17500, *et seq.* (THE "FAL")**

4 60. Plaintiff hereby incorporates by reference the allegations contained in this
5 Complaint.

6 61. The California False Advertising Law prohibits unfair, deceptive, untrue, or
7 misleading advertising, including but not limited to making any statements as part of a plan or
8 scheme with the intent not to sell goods or services at the advertised price.

9 62. As alleged above, Defendants advertise their USB flash drives as having a particular
10 amount of memory when in fact the flash drives contain less available storage capacity than
11 advertised.

12 63. Defendants' practice was unfair, deceptive, and misleading to consumers, who think
13 they are paying for flash drives with the amount of available storage capacity advertised on the front
14 of the package.

15 64. Through their unfair, deceptive, and misleading acts and practices, Defendants have
16 improperly obtained money from Plaintiff and the putative class. Plaintiff respectfully requests that
17 the Court restore these funds to Plaintiff and the putative class and enjoin Defendants' continuing
18 violations of the FAL to prevent further irreparable harm to consumers.

19 **THIRD CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT,**

21 **CAL. CIVIL CODE § 1750, *et seq.* (THE "CLRA")**

22 65. Plaintiff hereby incorporates by reference the allegations contained in this
23 Complaint.

24 66. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
25 California Civil Code § 1750, *et seq.*

26 67. Plaintiff and each member of the putative class are "consumers" within the meaning
27 of Civil Code § 1761(d).

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1 68. Defendants’ sale of flash drives constitutes “transactions” within the meaning of
2 Civil Code § 1761(e).

3 69. The items purchased by Plaintiff and the putative class are “goods” or “services”
4 within the meaning of Civil Code § 1761(a).

5 70. Defendants have engaged in unfair methods of competition and unfair and/or
6 deceptive acts or practices against Plaintiff and the putative class in violation of the CLRA by falsely
7 representing that consumers, including Plaintiff, would receive greater storage capacity on their
8 flash drives than actually was available, in violation of Cal. Civ. Code sections 1770(a)(5)
9 (prohibiting “[r]epresenting that goods or services have sponsorship, approval, characteristics,
10 ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship,
11 approval, status, affiliation, or connection that the person does not have”); 1770(a)(7)(prohibiting
12 “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods
13 are of a particular style or model, if they are of another”); 1770(a)(9) (prohibiting “[a]dvertising
14 goods or services with intent not to sell them as advertised”).

15 71. As a result of these acts and practices, Plaintiff and the putative class were damaged
16 in that Defendants’ unlawful and misleading acts and practices impacted the decisions of Plaintiff
17 and the putative class when purchasing the flash drives, including the amount of storage capacity
18 they received, and the price they paid.

19 72. Pursuant to Civil Code § 1782, on June 19, 2024, Plaintiff sent Defendants a letter,
20 by certified mail, in which he outlined the foregoing violations of the CLRA and requested that
21 Defendants remedy these violations as to Plaintiff and the putative class. Defendants did not agree
22 to correct, repair, replace, or otherwise rectify the violations alleged herein within thirty (30)
23 calendar days after Defendants’ receipt of Plaintiff’s letter. Consequently, pursuant to Civil Code
24 section 1782(d), Plaintiff seeks damages, including actual, statutory, and punitive damages.

25 73. Pursuant to California Civil Code section 1780(a)(2), Plaintiff, on behalf of himself
26 and the putative class, also requests that this Court issue an injunction prohibiting Defendants from
27 engaging in the unlawful and deceptive methods, acts, and practices alleged above.

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1 **FOURTH CAUSE OF ACTION**

2 **BREACH OF CONTRACT**

3 74. Plaintiff hereby incorporates by reference the allegations contained in this
4 Complaint.

5 75. Plaintiff and each customer entered into written contracts with Defendants whereby
6 Defendants promised to sell the USB flash drives that they manufactured, advertised, and marketed
7 with a particular amount of storage capacity through the representations that they made on the front
8 of the package. Defendants also represented that the flash drives were compatible with Windows
9 and other operating systems. When consumers purchased the product, they accepted the offer
10 presented on the front of the package.

11 76. In purchasing Defendants' product, Plaintiff and other customers entered into
12 contracts with Defendants wherein Defendants promised that the product would perform as
13 advertised.

14 77. Plaintiff and putative class members bought memory drives and paid the required
15 purchase price, and thereby accepted Defendants' offer and entered into a contract with Defendants
16 based on the promises that Defendants made on the front of the package regarding storage capacity.

17 78. Defendants breached these contracts by providing USB flash drives with less than
18 the promised amount of storage capacity – in Plaintiff's case, less than 32 GB of storage capacity.

19 79. As a direct and proximate result of Defendants' breach, each customer was damaged
20 in the amount of the value of the scant storage capacity, in an overall amount to be established at
21 trial.

22 **FIFTH CAUSE OF ACTION**

23 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

24 80. Plaintiff hereby incorporates by reference the allegations contained in this
25 Complaint.

26 81. Plaintiff and putative class members entered into contracts with Defendants, as
27 alleged hereinabove. Implied in these contracts was a covenant of good faith and fair dealing by
28 each party agreeing not to do anything that would deprive the other parties of the benefits of the

1 contracts.

2 82. Plaintiff and putative class members have performed all conditions, covenants, and
3 promises required of them under the contracts.

4 83. Defendants breached the implied covenant of good faith and fair dealing by failing
5 to provide the purchased products as promised to Plaintiff and putative class members, and in doing
6 so did not act fairly and in good faith.

7 84. As a direct and proximate cause of Defendants' breach of the implied covenant of
8 good faith and fair dealing, Plaintiff and putative class members have been damaged, as alleged
9 above, in an amount in excess of the jurisdictional limits of this Court to be proven at the time of
10 trial.

11 **SIXTH CAUSE OF ACTION**

12 **BREACH OF EXPRESS OR IMPLIED WARRANTY**

13 85. Plaintiff hereby incorporates by reference the allegations contained in this
14 Complaint.

15 86. By advertising and selling the subject flash drives, Defendants made promises and
16 affirmations of fact on the products' packaging and labeling, as described herein. This labeling and
17 advertising constitutes express or implied warranties and became part of the basis of the bargain
18 between Plaintiff and members of the class, and Defendants.

19 87. Defendants, through their advertising and labeling, created express or implied
20 warranties that the purchased products comport with the representations identified hereinabove.
21 Specifically, Defendants created express or implied warranties that the flash drives contain the
22 represented amount of storage capacity, including when used in electronic devices running Windows
23 operating systems.

24 88. The express or implied warranties appeared on the labels of Defendants' Memorex
25 flash drives and specifically relate to the goods being sold.

26 89. Despite Defendants' express or implied warranties about the nature of their Memorex
27 flash drives, these products do not comply with the foregoing representations. Thus, the flash drives
28 were not what Defendant represented them to be.

1 90. Accordingly, Defendants breached express or implied warranties about Memorex
2 flash drives because these products did not conform to Defendants' affirmations and promises.

3 91. Plaintiff provided Defendants with pre-suit notice of the breach of warranty,
4 including by letter dated June 19, 2024.

5 92. As a direct and proximate result of Defendants' breach of express or implied
6 warranty, Plaintiff and members of the class were harmed in the amount of the scanted storage
7 capacity. Further, Plaintiff and members of the proposed class have suffered and continue to suffer
8 economic losses and other general and specific damages and any interest that would have accrued
9 on those monies, in an amount to be proven at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **DECEIT**

12 93. Plaintiff hereby incorporates by reference the allegations contained in this
13 Complaint.

14 94. Defendants have intentionally, or in the alternative, negligently made material
15 misrepresentations of fact concerning the available storage capacity of their USB flash drives. In
16 particular, Defendants misrepresented that the flash drives had more storage capacity than they
17 actually had. Rather than state the true capacity of the flash drives, Defendants overstated the
18 storage capacity.

19 95. Defendants knew that the misrepresentations alleged herein were false at the time
20 Defendants made them or had no reasonable grounds for believing them to be true.

21 96. Moreover, Defendants suppressed a material fact relating to the sale of its flash
22 drives, namely, that the stated representation of storage capacity on the front of the package was
23 different from, and greater than, the storage capacity that would be reflected by the operating
24 systems used by most of Defendants' customers who purchased the subject flash drives. In addition,
25 Defendants gave information of other facts (e.g., the flash drives' purported compatibility with
26 Windows operating systems) which are likely to mislead consumers given Defendants' failure to
27 communicate that their flash drives would deliver less storage capacity as measured by Windows
28 operating systems. Further, Defendants knew about the likelihood of confusion regarding its

1 representation of storage capacity on the front of the product and use of the abbreviation “GB”
2 without any asterisk or apparent qualification. Defendants also knew that their flash drives used
3 memory for formatting and internal functions that resulted in customers receiving less than the stated
4 storage capacity.

5 97. Defendants intended that Plaintiff and members of the putative class should rely on
6 the false and deceptive representations and purchase Defendants’ items.

7 98. Defendants’ false and deceptive representations of the amount of storage capacity
8 are objectively material to reasonable consumers, and therefore reliance upon such representations
9 may be presumed as a matter of law.

10 99. Plaintiff and members of the putative class reasonably relied to their detriment on
11 Defendants’ intentional misrepresentations.

12 100. Defendants’ misrepresentations and omissions were a substantial factor in causing
13 Plaintiff and members of the putative class to suffer damages in the amount of the scanted storage.

14 101. Defendants have committed fraud through their misrepresentations, deceit, and/or
15 concealment of material facts known to Defendants with the intent to cause injury to the purchasers
16 of their items.

17 102. As a proximate result of Defendants’ misrepresentations and omissions, Plaintiff
18 and members of the putative class suffered an ascertainable loss and are entitled to relief and
19 compensatory and punitive damages, in an amount to be determined at trial.

20 **EIGHTH CAUSE OF ACTION**

21 **UNJUST ENRICHMENT**

22 103. Plaintiff hereby incorporates by reference the allegations contained in this
23 Complaint.

24 104. Defendants received a benefit from Plaintiff and putative class members in the form
25 of overstating the available storage capacity of their flash drives.

26 105. It is unjust for Defendants to retain the money they received from Plaintiff and
27 putative class members because Defendants gained that money by deceiving Plaintiff and the
28 putative class about the quality of the items they were purchasing, as alleged above.

106. Defendants have been unjustly enriched at the expense of Plaintiff and the putative class by receiving money in the form of the inflated purchase price of the deceptively labeled flash drives, thereby creating a quasi-contractual obligation on Defendants to restore these ill-gotten gains to Plaintiff and putative class members.

107. Plaintiff and the putative class are therefore entitled to restitution in the amount of the scanted storage capacity, with which Defendants have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the putative class, prays as follows:

- (a) For an order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be appointed counsel for the class;
- (b) For a declaration that Defendants' practices violate the UCL, FAL, and CLRA, and that they constitute deceit, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of warranty, and unjust enrichment;
- (c) For an award of actual and compensatory damages according to proof against Defendants;
- (d) For an award of appropriate equitable relief, including but not limited to an injunction forbidding Defendants from engaging in the conduct described in this Complaint, and restitution;
- (e) For an award of punitive damages;
- (f) For an order awarding reasonable attorneys' fees and the costs of suit herein, including an award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5 and California Civil Code § 1780(e);
- (g) For an award of pre- and post-judgment interest; and
- (h) For such other and further relief as may be deemed necessary or appropriate.

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JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: June 23, 2025

COUNSELONE, PC

By



Anthony J. Orshansky
Alexandria R. Kachadoorian
Justin Kachadoorian

*Attorneys for Plaintiff Salvador Caldera,
on behalf of himself and others similarly
situated*

**DECLARATION OF PLAINTIFF SALVADOR CALDERA
PURSUANT TO CAL. CIVIL CODE § 1780(d)**

I, Salvador Caldera, declare:

1. I am over 18 years of age and the named plaintiff in this action. The information supplied herein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law. The information contained herein is true, except as to the matters which were provided by my attorneys or other agents, and, as to those matters, I am informed and believe that they are true. If called upon to testify to the information contained in this Declaration, I could and would competently do so.

2. The transactions that are the subject of this lawsuit occurred in Los Angeles County, State of California.

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

Executed on 6/20/2025.

By:  Salvador Caldera
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