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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA
MEJ

VIA FAX
ORIGINAL

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

MEJ

18 JOHN KENNEDY, an individual, on his own
behalf and on behalf of all similarly situated,

Case No. CV 09

4701

19 Plaintiff,

CLASS ACTION

20 v.

COMPLAINT FOR:

21
22 SONY COMPUTER ENTERTAINMENT
23 AMERICA INC., a corporation,

- 1. Breach of Implied Warranty;
- 2. Negligence
- 3. Negligent Misrepresentation
- 4. Unjust Enrichment
- 5. Trespass to Chattels
- 6. California Unfair Competition Law, Business and Professions Code § 17200;
- 7. California Consumer Legal Remedies Act, Civil Code § 1750

24 Defendant.

JURY DEMAND

1 Plaintiff, individually and on behalf of all others similarly situated, alleges
2 upon personal knowledge as to his own acts and on information and belief based
3 on investigation of counsel as to all other matters as follows:

4 **NATURE OF CASE**

5 1. Thousands of Sony PlayStation 3 (“PS3”) video game owners who
6 downloaded a system software update required by Sony found that the update
7 caused their PS3 units to malfunction and actually damaged the hardware on
8 many units. For owners who sustained hardware damage from the Sony-required
9 update, Sony is charging a \$150 repair fee per unit. Sony, responding to the nu-
10 merous complaints about the unacceptable effects of the defective update, re-
11 leased a further, optional update that it claimed “improves system stability”—yet
12 performance problems continued, and the new update did nothing to remedy the
13 systems of users who sustained hardware damage.

14 2. Sony failed to perform adequate testing to detect the performance
15 degradation and product damage effects of its update, failed to warn its customers
16 of possible defects, continues to distribute the defective updates, and has caused
17 and continues to cause financial injury to thousands of consumers. Plaintiff,
18 whose system is still not operating correctly and who was informed by Sony that
19 it would cost \$150 to repair problems caused by the update, brings this action in-
20 dividually and on behalf of all others similarly situated to require Sony to repair,
21 without any cost to the consumer, any PS3 degradation and malfunction caused
22 by the updates; suspend distribution of the updates until it resolves their tendency
23 to damage users’ PS3 systems; and provide other appropriate relief.

24 **JURISDICTION AND VENUE**

25 3. This court has subject matter jurisdiction under 28 U.S.C. §
26 1332(d)(2) because plaintiff and Sony are citizens of different states and the
27 claims of plaintiff and the proposed class exceed the sum or value of \$5 million,
28 exclusive of interest and costs.

1 4. This Court has personal jurisdiction over defendant Sony Computer
2 Entertainment America Inc. ("Sony") because Sony's principal place of business
3 is California and it regularly transacts business within this jurisdiction.

4 5. Venue is proper in this district under 28 U.S.C. § 1391(c) because
5 Sony is subject to personal jurisdiction here.

6 **INTRADISTRICT ASSIGNMENT**

7 6. Pursuant to Local Rule 3-5(b) and 3-2(c), this action should be as-
8 signed to the San Francisco Division of the Northern District of California be-
9 cause Defendant resides in the County of San Francisco.

10 **PARTIES**

11 7. Plaintiff John Kennedy is a Florida resident. He purchased a Sony
12 PS3 on January 8, 2009 for several hundred dollars, installed a Firmware 3.0 up-
13 date ("Firmware 3.0") in September 2009, and experienced the system failures of
14 the type complained of herein. Mr. Kennedy lost value in his PS3 as a result of
15 the failures complained of herein. Mr. Kennedy was informed by Sony that it
16 would charge him approximately \$150 to repair his PS3 system.

17 8. Defendant Sony is a Delaware corporation headquartered in Foster
18 City, California. Sony sells its products, including the PS3, in the State of New
19 York and nationwide.

20 **GENERAL ALLEGATIONS**

21 9. Sony released the PS3 home video game console in North America
22 in November 2006, touting it as "the most advanced computer system that serves
23 as a platform to enjoy next generation computer entertainment."¹ The system is
24 supposed to provide years of enjoyment. The PS3 competes with video game
25 consoles such as the Microsoft Xbox 360 and Nintendo Wii. Since the PS3's re-
26

27 ¹*About SCEA—The PlayStation®Story*, available at
28 <http://www.us.playstation.com/Corporate/About/ThePlayStationStory/default.html> (last visited Septem-
ber 25, 2008).

1 lease, the manufacturer's suggested retail price has ranged from approximately
2 \$300 to \$600. Reportedly, Sony has sold approximately 23 million PS3 units.

3 10. Sony occasionally issues software updates for the PS3 system. These
4 software updates may provide security patches, new features, or other modifica-
5 tions to the PS3 operating system. Upon information and belief, PS3 owners are
6 unable to play certain games or utilize certain game features unless they install
7 the latest upgrades.

8 11. On or about September 1, 2009, Sony released a software update it
9 referred to as "Firmware 3.0," which Sony claimed would add "a number of great
10 new features" and "changes that improve navigation on your PS3."

11 12. Although, as a general rule, Sony "encourages" PS3 owners to install
12 the latest versions of system software,² Sony required users to install the Firm-
13 ware 3.0 update.³

14 13. Almost immediately after the release of Firmware 3.0, plaintiff and
15 other PS3 owners began experiencing problems with their PS3 systems. These
16 problems included excessive freezing during game play and loss of use of the
17 controller—the handheld device with which users perform interactive video game
18 functions.

19 14. Sony maintains a forum on the company's website on which users
20 can submit comments or respond to other users' comments. The forum is moni-
21 tored and read by Sony employees, who sometimes respond to or edit users' en-
22 tries.

23 15. During the week following Sony's September 1, 2009 release of
24 Firmware 3.0, the forum's many complaints about system failure issues made

25 ² *Support: System Software Updates—PlayStation®3 System Software Update 3.01*, available at
26 <http://www.us.playstation.com/Support/SystemUpdates/PS3/default.html> (last visited September 25,
2009).

27 ³ *PlayStation.blog—PlayStation 3 Firmware (v3.00) Update*, available at
28 <http://blog.us.playstation.com/2009/08/playstation-3-firmware-v3-00-update/> (last visited September 25,
2009).

1 Sony well aware that Firmware 3.0 was defective and was damaging users' sys-
2 tems. On September 8, 2009, Sony posted a "Firmware 3.00 Q & A" responding
3 to some of the complaints, including those regarding freezing of systems during
4 game play.

5 16. Following the many complaints, Sony released another software up-
6 date, Firmware 3.01, on September 15, 2009. Sony claimed that Firmware 3.01,
7 an optional update, "improves system stability."

8 17. Plaintiff and other PS3 owners downloaded the Firmware 3.01 up-
9 date, hoping it would remedy the problems caused by the Firmware 3.0 update.
10 Unfortunately, the 3.01 update not only failed to address problems introduced by
11 Firmware 3.0, it caused new problems. Many users who downloaded the Firm-
12 ware 3.01 update began experiencing malfunctioning of their PS3s' built-in Blu-
13 ray Disc drives, which make games, movies, DVDs, CDs, and other optical media
14 available for use on the PS3.

15 18. As a result of the Firmware 3.0 update intentionally distributed by
16 Sony, the PS3 systems of plaintiff and other similarly affected PS3 owners have
17 been impaired in their condition, quality, and utility, and Sony was or should have
18 been aware that the Firmware 3.0 update would cause such conditions.

19 19. Plaintiff and other PS3 owners who contacted Sony about the hard-
20 ware damage caused by the Firmware 3.0 update to their PS3 systems have been
21 told by Sony that they must each pay approximately \$150 for needed repairs.
22 Sony has refused to repair, free of charge, the problems caused by its own manda-
23 tory Firmware update.

24 **CLASS ALLEGATIONS**

25 20. Plaintiff brings this action individually and as a class action pursuant
26 to Rule 23, on behalf of a class defined as follows:
27
28

1 All persons in the United States who own Sony PS3s and re-
2 quire repairs to the hardware systems of their PS3s to resolve
3 problems caused by the Firmware 3.0 update.

4 Excluded from the class are Sony and its subsidiaries and affiliates, and Sony's
5 executives, board members, legal counsel, and their immediate families.

6 21. Upon information and belief, the class consists of at least tens of
7 thousands of members in diverse locations throughout the United States, and
8 therefore is so numerous and geographically dispersed that joinder is impractica-
9 ble. Although the exact number of class members is presently unknown to plain-
10 tiff, class membership will be ascertainable through Sony's and/or class members'
11 records.

12 22. Among the questions of law and fact common to the class are the
13 following:

- 14 a. Does the Firmware 3.0 update contain defects?
- 15 b. Is the Firmware 3.0 update fit to be used as intended?
- 16 c. Did Sony perform reasonable testing of the Firmware
17 3.0 update prior to releasing it?
- 18 d. Did Sony know the Firmware 3.0 update was defective?
- 19 e. When did Sony know that its Firmware 3.0 update was
20 defective?
- 21 f. When should Sony have known that its Firmware 3.0
22 update was defective?
- 23 g. Should Sony have disclosed to users the potential
24 problems associated with the Firmware 3.0 update
25 defects?
- 26 h. Did Sony make representations that the Firmware 3.0
27 update was of a particular standard or quality that it did
28 not have?

- 1 i. Did Sony violate consumer protection statutes and/or
- 2 state deceptive business practices statutes?
- 3 j. Did Sony breach the implied warranty of
- 4 merchantability?
- 5 k. Did Sony commit the common-law tort of negligent
- 6 misrepresentation?
- 7 l. Was Sony unjustly enriched by its actions?
- 8 m. Did Sony commit the common-law tort of trespass to
- 9 chattels?
- 10 n. What is the nature of the relief to which the class is
- 11 entitled?

12 23. Plaintiff is a member of the class. His claims are typical if not identi-
13 cal to the claims of the other class members because they and all other class
14 members were affected by the same wrongful practices in which Sony engaged,
15 as alleged herein.

16 24. Plaintiff will fairly and adequately protect the interest of the mem-
17 bers of the class. Plaintiff's interest is coincident with and not antagonistic to the
18 interest of the class. Plaintiff has engaged attorneys experienced in the prosecu-
19 tion of class actions. Neither the plaintiff nor his attorneys have any conflict in
20 undertaking this representation.

21 25. Sony has acted on grounds generally applicable to the entire class,
22 thereby making appropriate final injunctive relief and corresponding declaratory
23 relief with respect to the class as a whole.

24 26. The questions of law and fact common to plaintiff and other mem-
25 bers of the class, examples of which are identified above, predominate over ques-
26 tions that may affect only individual members.

27 27. A class action is superior to the alternatives, if any, for the fair and
28 efficient adjudication of the controversies alleged herein because such treatment

1 will permit a large number of similarly situated but geographically dispersed per-
2 sons to prosecute their common claims in a single forum simultaneously, effi-
3 ciently, and without duplication of evidence, effort, and expense that numerous
4 individual actions would engender. This action will result in the orderly and ex-
5 peditious administration of class claims. Uniformity of decisions will be assured,
6 thereby avoiding the risk of inconsistent and varying determinations.

7 28. The amount of restitution to each class member, or the amount of
8 damages and injuries suffered by each such person, is likely to be relatively small.
9 Therefore, the expense and burden of individual litigation make it difficult for the
10 members of the class to effectively seek redress individually for Sony's wrongful
11 conduct.

12 29. Plaintiff knows of no difficulty that will be encountered in the man-
13 agement of this litigation that would preclude its maintenance as a class action.

14 **CAUSES OF ACTION**

15 30. Based on the facts alleged herein, plaintiff is entitled to relief based
16 on at least the following causes of action:

17 **FIRST CAUSE OF ACTION**

18 **Breach of Implied Warranty**

19 31. Plaintiff incorporates by reference and realleges all paragraphs pre-
20 vious alleged herein.

21 32. By operation of law, Sony provided an implied warranty of mer-
22 chantability with each of the PS3 units at issue, promising that they were of mer-
23 chantable quality and including, among other things, that the PS3 units are fit for
24 the ordinary purposes for which such goods are used.

25 33. As set forth above, Sony breached its implied warranties by requir-
26 ing users to install the Firmware 3.0 update, which caused a defective condition
27 that did not meet the implied warranty and rendered the PS3 unfit for the ordinary
28 purpose for which the PS3 units are used.

1 34. Sony has received timely notice of its breaches in the manner alleged
2 above but refuses to provide plaintiff or the class, as a warranty replacement, a
3 product that conforms to the qualities and characteristics that Sony expressly war-
4 ranted when it sold the PS3 units.

5 35. As a result of Sony's breach of the implied warranty of merchant-
6 ability, plaintiff and the class have suffered damages in an amount to be deter-
7 mined at trial.

8 **SECOND CAUSE OF ACTION**

9 **Negligence**

10 36. Plaintiff incorporates by reference and realleges all paragraphs pre-
11 vious alleged herein, except that plaintiff expressly disclaims any allegation of
12 scienter or intentional fraud.

13 37. Defendant had a duty to its customers who installed Firmware 3.0 to
14 exercise reasonable care in the design, manufacture, testing, processing, advertis-
15 ing, and marketing of the Firmware updates.

16 38. Defendant breached that duty by failing to exercise reasonable care
17 in designing, manufacturing and offering for download the Firmware update as
18 described above.

19 39. As a direct and proximate result of defendant's conduct, the Firm-
20 ware 3.0 update performed defectively and caused the PS3, of which the Firm-
21 ware 3.0 update was a part, to perform defectively, as described above.

22 40. Plaintiff and members of the class have been damaged as a result of
23 the conduct complained of herein.

24 **THIRD CAUSE OF ACTION**

25 **Negligent Misrepresentation**

26 41. Plaintiff incorporates by reference and realleges all paragraphs pre-
27 vious alleged herein, except that plaintiff expressly disclaims any allegation of
28 scienter or intentional fraud.

1 42. Defendant had a duty to its customers who installed Firmware 3.0 to
2 exercise reasonable care in the design, manufacture, testing, processing, advertis-
3 ing, and marketing of the Firmware updates.

4 43. By virtue of the foregoing, defendant breached that duty.

5 44. As a direct and proximate result of defendant's breach of duty, the
6 Firmware 3.0 update performed defectively and caused the PS3, of which the
7 Firmware 3.0 update was a part, to perform defectively, as described above.

8 45. Plaintiff and members of the class had no knowledge of the falsity
9 and/or incompleteness of defendant's misrepresentations and/or of the defects in
10 the Firmware 3.0 update when they downloaded the updates. Plaintiff and mem-
11 bers of the class relied upon defendant's deceptive practices, misrepresentations,
12 and omissions to their detriment.

13 46. Plaintiff and members of the class have been damaged as a result of
14 the conduct complained of herein.

15 47. Defendant is liable for actual damages to plaintiff and members of
16 the class.

17 **FOURTH CAUSE OF ACTION**

18 **Unjust Enrichment**

19 48. Plaintiff incorporates by reference and realleges all paragraphs pre-
20 vious alleged herein.

21 49. To the detriment of plaintiff and members of the class, Sony has, and
22 continues to be unjustly enriched as a result of the unlawful and/or wrongful col-
23 lection of, *inter alia*, payments for repair of PS3 units and for sales of PS3 units
24 degraded or rendered inoperable by the Firmware 3.0 update. Defendant appreci-
25 ates and has knowledge of the benefits it has received under the circumstances al-
26 leged above and has failed to make restitution of and for such benefits.

27 50. Under principles of equity and good conscience, Sony should not be
28 permitted to retain the benefits it has acquired through its unlawful conduct. All

1 funds, revenues, and benefits that defendant has unjustly received as a result of its
2 actions rightfully belong to plaintiff and the class.

3 51. Accordingly, plaintiff and members of the class seek full restitution
4 of defendant's enrichment, benefits, and ill-gotten gains acquired as a result of the
5 unlawful and/or wrongful conduct alleged herein.

6 **FIFTH CAUSE OF ACTION**

7 **Trespass to Chattels**

8 52. Plaintiff incorporates by reference and realleges all paragraphs pre-
9 vious alleged herein.

10 53. The common law prohibits the intentional intermeddling with a chat-
11 tel, including a computer or gaming system, in possession of another that results
12 in the deprivation of the use of the chattel or impairment in the condition, quality,
13 or usefulness of the chattel.

14 54. By engaging in the acts described above defendant dispossessed
15 plaintiff and members of the class from use and/or access to their PS3 systems, or
16 parts of them. Further, these acts impaired the use, value and quality of plaintiff's
17 and class members' PS3 systems. Defendant acts constituted intentional interfer-
18 ence with the use and enjoyment of the PS3 units that were subjected to the
19 Firmware updates. By the acts described above, defendant has repeatedly and per-
20 sistentlly engaged in trespass to chattels in violation of common law.

21 55. As a result of defendant's acts, plaintiff and members of the class
22 have suffered damages in an amount to be determined at trial.

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California's Unfair Competition Law**

25 56. Plaintiff incorporates by reference all previous allegations as though
26 set forth fully herein.

27 57. California Business & Professions Code § 17200 *et seq.* (the "UCL")
28 prohibits unfair competition. In this context, "unfair competition shall mean and

1 include any unlawful, unfair, or fraudulent business act or practice. . . .” Cal. Bus.
2 & Prof. Code § 17200.

3 58. The “unlawful” prong of the UCL permits a plaintiff to obtain relief
4 from anything that can properly be called a business practice and that at the same
5 time is forbidden by law, regardless of whether the underlying law provides for a
6 private right of action.

7 59. The “unfair” prong of the UCL is intentionally broad, thus allowing
8 courts maximum discretion to prohibit new schemes to defraud. Outside of the
9 competitor context, lower courts have enunciated differing tests for unfairness
10 under the UCL. One test is that the harm to the victim outweighs the justification
11 of the alleged wrongdoer. A different test is that the defendant’s acts offend a pub-
12 lic policy that is tethered to some statutory provision. Still another test is that the
13 defendant’s acts constitute sharp practices.

14 60. The “fraudulent” prong of the UCL bears little resemblance to com-
15 mon-law fraud. The test is whether the public is likely to be deceived.

16 61. Defendant has engaged and continues to engage in unlawful, unfair,
17 and/or fraudulent business acts or practices as alleged herein, in violation of the
18 UCL. By engaging in the above-described acts and practices, Defendant has
19 committed one or more acts of unfair competition within the meaning of the UCL
20 which have resulted in injury-in-fact and the loss of money and property of plain-
21 tiff and the class—specifically, the value of the PS3 purchase price and the addi-
22 tional cost of wrongfully charged repairs.

23 62. Defendant, by its conduct and practices alleged herein, has commit-
24 ted and continues to commit violations of Cal. Bus. & Prof. Code § 17500 *et seq.*
25 and Civil Code § 1750 *et seq.* and defendant therefore is in violation of the
26 “unlawful” prong of the UCL.

27 63. Defendant’s business acts and practices are unlawful, in part, be-
28 cause they violate California Business and Professions Code § 17500, *et seq.*,

1 which prohibits false advertising, in that Defendant's representations regarding its
2 product were untrue and misleading statements by which defendant intended to
3 induce consumers to purchase its product, and regarding which statements Defen-
4 dant knew or which, and by the exercise of reasonable care Defendant should
5 have known, to be untrue and misleading. Defendant's business acts and practices
6 are also unlawful in that they violate the California CLRA and constitute breach
7 of implied warranty, negligent misrepresentation, trespass to chattels, and unjust
8 enrichment. Defendant is therefore in violation of the "unlawful" prong of the
9 UCL.

10 64. Defendant, by its conduct and practices alleged herein, has engaged
11 and continues to engage in conduct and practices that cause considerable harm
12 and injury in fact to plaintiff and members of the class, and has no justification
13 whatsoever. Defendant's conduct and practices offend a public policy of protect-
14 ing members of the public from misleading advertising, the sale of defective
15 goods, and misrepresentations to consumer purchasers concerning the characteris-
16 tics, uses, benefits, standard, quality, or grade of merchandise, all of which are
17 tethered to statutory provisions. Defendant's *modus operandi* constitutes a sharp
18 practice because Sony knows of the existence and nature of the defects at issue
19 yet refuses to acknowledge them, let alone recall the video game consoles and
20 remedy the problem. Sony's conduct evinces a design to enrich itself with money
21 it has and will save by avoiding the proper testing of PS3 updates and avoiding
22 the cost of the consequences to the extent that some consumers decline to spend
23 the time, money, and effort to pursue claims on an individual basis. Defendant is
24 therefore in violation of the "unfair" prong of the UCL.

25 65. Defendant's conduct and practices alleged herein are likely to de-
26 ceive because an objectively reasonable purchaser to whom Sony's practices are
27 directed would assume that the defendant sells video game consoles of merchant-
28 able quality and without known defects that will or could predictably cause seri-

1 ous product performance degradation or failure and require costly hardware re-
2 pair, when such is not the case. Defendant is therefore in violation of the “fraudu-
3 lent” prong of the UCL.

4 66. Plaintiff and the class members have suffered injury in fact and have
5 lost money as a result of defendant’s violations of the UCL. Specifically, plaintiff,
6 having spent money to purchase a product that was rendered inoperable by defen-
7 dant’s conduct, is being required by defendant to spend additional sums to restore
8 the product to operability; and all class members, whether or not their video game
9 consoles incurred a failure to date, paid more for their PS3s than the units were
10 worth and that they otherwise would have paid but for Sony’s violations.

11 67. Plaintiff reasonably believes that defendant’s wrongful practices al-
12 leged herein are ongoing and continue to be a threat to plaintiff and the class
13 members.

14 68. Plaintiff and the class are therefore entitled to injunctive relief, resti-
15 tution, and/or disgorgement in amounts to be proved at trial, and other relief as
16 pleaded in the Prayer for Relief.

17 SEVENTH CAUSE OF ACTION

18 Violation California’s Consumer Legal Remedies Act

19 69. Plaintiff incorporates by reference all previous allegations as though
20 set forth fully herein.

21 70. This claim arises under the Consumer Legal Remedies Act, Cal. Civ.
22 Code § 1750 *et seq.* (the “CLRA”).

23 71. Plaintiff and class members are “consumer” as that term is defined in
24 Civ. Code § 1761(d), with respect to their purchases of Sony PS3s they sought or
25 acquired defendant’s goods or services for personal, family, or household pur-
26 poses.

27 72. Sony PS3s constitute “goods” as that term is defined in Cal. Civ.
28 Code § 1761(a).

1 73. Sony is a “person” as that term is defined in Civ. Code § 1761(c).

2 74. Plaintiff’s purchase of a Sony PS3 constituted a “transaction” as that
3 term is defined in Civ. Code § 1761(e).

4 75. The CLRA provides, in relevant part:

5 The following unfair methods of competition and unfair or decep-
6 tive acts or practices undertaken by any person in a transaction in-
7 tended to result or which results in the sale or lease of goods or
8 services to any consumer are unlawful: (5) Representing that
9 goods . . . have . . . approval, characteristics, uses, benefits . . .
10 which they do not have, (7) Representing that goods . . . are of a
11 particular standard, quality or grade . . . if they are of another,
12 (9) Advertising goods . . . with intent not to sell them as adver-
13 tised

14 Civ. Code § 1770(a)(5), (7), and (9).

15 76. Defendant made and continues to make written representations that
16 the Sony PS3 video game consoles are high-quality products that perform as rep-
17 resented. These representations, as set forth above, were false and/or misleading
18 and were in violation of the CLRA.

19 77. In violation of Civil Code § 1750, *et seq.*, defendant has engaged and
20 is engaging in unfair and deceptive acts and practices in the course of transactions
21 with plaintiff and the class, and such transactions are intended to and have re-
22 sulted in the sales of services to consumers. Defendant’s past and ongoing acts
23 and practices include but are not limited to:

24 a. Defendant’s representations that its goods have characteristics,
25 uses, and benefits that they do not have, in violation of Civil Code § 1770(a)(5);

26 b. Defendant’s representations that its goods are of a particular
27 standard, quality and grade but are of another standard quality and grade, in viola-
28 tion of Civil Codes § 1770(a)(7); and

1 c. Defendant's advertisement of goods with the intent not to sell
2 those goods as advertised, in violation of Civil Code § 1770(a)(9);

3 78. Defendant's violations of Civil Code § 1770 have caused damage to
4 plaintiff and the other class members and threaten additional injury if the viola-
5 tions continue. This damage includes the loss of the advertised utility of the prod-
6 uct purchased by plaintiff and class members and monies paid by class members
7 for repairs that should have been paid for by Sony.

8 79. At this time, plaintiff seeks only injunctive relief under this cause of
9 action. Pursuant to Civil Code § 1782, in conjunction with the filing of this ac-
10 tion, plaintiff will notify Sony in writing of the particular violations of Civil Code
11 § 1770 and demand that it rectify the problems associated with its behavior de-
12 tailed above, which acts and practices are in violation of Civil Code § 1770.

13 80. If defendant fails to respond adequately to plaintiff's above-
14 described demand within 30 days of plaintiff's notice, pursuant to Civil Code §
15 1782(b), plaintiff will amend the complaint to request damages and other relief,
16 as permitted by Civil Code § 1780. .

17 **PRAYER FOR RELIEF**

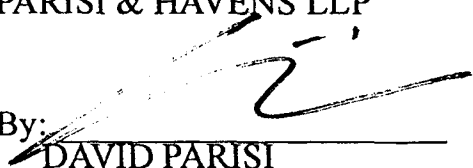
18 WHEREFORE plaintiff, on behalf of himself and all others similarly situ-
19 ated, prays for the following relief against defendant:

- 20 A. An order certifying that this action may proceed as a class action;
- 21 B. judgment in favor of plaintiff and the class and against defendant;
- 22 C. declarations that defendant's acts and practices alleged herein are
23 wrongful;
- 24 D. an injunction enjoining defendant from directly or indirectly commit-
25 ting further wrongful acts as alleged herein;
- 26 E. an order directing restitution or disgorgement in an allowable
27 amount to be proved at trial;
- 28 F. compensatory damages in an amount to be proved at trial;

- 1 G. pre- and post-judgment interest to the maximum extent permissible;
- 2 H. an award to plaintiff and the class members of their costs and ex-
- 3 penses incurred in this action, including reasonable attorneys' fees, to the extent
- 4 permissible;
- 5 I. such other or further relief as the Court may deem just or proper.

6
7 October 2, 2009

Respectfully submitted,
PARISI & HAVENS LLP

8
9
10 By: 
11 DAVID PARISI
12 Attorneys for Plaintiff, Individually, and
13 on Behalf of a Class of Similarly
14 Situated Individuals
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JURY DEMAND

Plaintiff requests trial by jury of all issues so triable.

October 2, 2009

Respectfully submitted,
PARISI & HAVENS LLP

By: 
~~DAVID PARISI~~

Attorneys for Plaintiff, Individually, and
on Behalf of a Class of Similarly
Situated Individuals