

EXHIBIT 4

FILED ①
2010 MAY -5 P 3:47SS
RICHARD W. VIERING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Rosemary M. Rivas (State Bar No. 209147)
rrivas@finkelsteinthompson.com
2 Mark Punzalan (State Bar No. 247599)
mpunzalan@finkelsteinthompson.com
3 Tracy Tien (State Bar No. 253930)
ttien@finkelsteinthompson.com
4 **FINKELSTEIN THOMPSON LLP**
5 100 Bush Street, Suite 1450
San Francisco, CA 94104
6 Telephone: (415) 398-8700
7 Facsimile: (415) 398-8704

8 Counsel for Plaintiffs Todd Densmore and Antal Herz

9 [Additional Counsel Listed on Signature Page]

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

EDL
CV 10 1945

12 TODD DENSMORE and ANTAL HERZ, on
13 behalf of themselves and all others similarly
14 situated,

CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

15 Plaintiffs,

16 v.

17 **SONY COMPUTER ENTERTAINMENT**
18 **AMERICA, INC., a Delaware corporation,**

19 Defendant.

20
21 Plaintiffs Todd Densmore and Antal Herz, on behalf of themselves and all others
22 similarly situated, based on personal knowledge, the investigation of their counsel, and on
23 information and belief, allege the following against Defendant Sony Computer Entertainment
24 America, Inc. ("Sony" or "Defendant");

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1 **NATURE OF ACTION**

2 1. Since Sony introduced the PlayStation 3 ("PS3") in 2006, one of its advertised
3 features included the "Install other OS" function that allowed users to install and run other
4 operating systems such as Linux.

5 2. On April 1, 2010, Sony released a PS3 firmware update version 3.21 ("Firmware
6 3.21") for the specific purpose of disabling the "Install Other OS" function. PS3 users who do
7 not install Firmware 3.21 lose the ability to sign on to the PlayStation Network ("PSN"), play
8 online games, access other online features, and play PS3 games or Blu-Ray discs that require
9 Firmware 3.21 or higher.

10 3. Defendant intentionally accessed PS3 systems and intentionally transmitted Firmware
11 3.21 with the knowledge and intent of disabling its advertised "Install Other OS" function.

12 4. Plaintiffs paid for PS3 features and functions that Defendant has rendered inoperable
13 as a result of Firmware 3.21.

14 5. Defendant's actions have resulted in injury in fact and lost money or property to
15 Plaintiffs. Plaintiffs, on behalf of themselves and the proposed Class (as defined in paragraph 33
16 below), hereby seek damages and other relief the Court deems just.

17 **PARTIES**

18 6. Plaintiff Todd Densmore is a citizen and individual residing in Cumming, Georgia.
19 Plaintiff Densmore bought a PS3 developed, marketed, and distributed by Defendant. Plaintiff
20 Densmore installed Firmware 3.21 as required by Defendant to operate certain functions and to
21 access certain games and thereafter lost the ability to use other operating systems. Plaintiff
22 Densmore has suffered injury in fact and has lost money and/or property as a result of the
23 unlawful conduct alleged herein.
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1 7. Plaintiff Antal Herz is a citizen and individual residing in San Francisco, California.
2 Plaintiff Herz bought a PS3 developed, marketed, and distributed by Defendant. Plaintiff Herz
3 installed Firmware 3.21 as required by Defendant to operate certain functions and to access
4 certain games and thereafter lost the ability to use other operating systems. Plaintiff Herz has
5 suffered injury in fact and has lost money and/or property as a result of the unlawful conduct
6 alleged herein.
7

8 8. Defendant Sony Computer Entertainment America Inc. ("Sony" or "Defendant")
9 develops, markets, and sells PlayStation gaming consoles, including the models at issue in this
10 litigation, in the United States and Canada. It was founded as the North American Division of
11 Sony Computer Entertainment Inc. Defendant is a Delaware company headquartered in Foster
12 City, California.
13

14 **JURISDICTION AND VENUE**

15 9. This Court has subject matter jurisdiction over this action pursuant to the Class
16 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of
17 diverse citizenship from the Defendant; there are more than 100 Class members nationwide; and
18 the aggregate amount in controversy exceeds \$5,000,000. This court has personal jurisdiction
19 over the parties because Defendant conducts substantial business in this State, has had systematic
20 and continuous contacts with this State, and has agents and representatives that can be found in
21 this State.
22

23 10. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part
24 of the events or omissions giving rise to the claims occurred within this District, Defendant has
25 caused harm to Class members residing within this District, and Defendant maintains its
26 headquarters in this District.
27

28 //

1 **INTRADISTRICT ASSIGNMENT**

2 11. Pursuant to Local Rules 3-2(c) and 3-5(b), this action should be assigned to the San
3 Francisco Division of California because Defendant resides in the County of San Mateo.

4 **FACTUAL ALLEGATIONS**

5 **Sony and PS3 Background**

6
7 12. Defendant, Sony Computer Entertainment America, Inc. was founded in 1994 as the
8 North American division of Sony Computer Entertainment Inc. and according to its website, is
9 responsible for the “continued growth of the PlayStation® market in the United States and
10 Canada.”

11 13. In 1995, the original PlayStation game console was introduced in the United States.
12 More than 100,000 units were sold during its debut weekend and more than one million units
13 were sold within the first six months.

14
15 14. On November 17, 2006, Defendant introduced the PS3, touting it as “the most
16 advanced computer system that serves as a platform to enjoy next generation computer
17 entertainment.” Defendant advertised, marketed, and sold PS3 systems as including a built-in
18 Blu-ray disc player, the ability to go online to access the PSN and play against other players, and
19 the ability to install other operating systems.¹ The ability to play Blu-ray discs and install other
20 operating systems is unique to the PS3 among other video games consoles.

21
22 15. The manufacturer’s suggested retail price for the PS3 has ranged from approximately
23 \$300 to \$600. Defendant has reportedly sold approximately 23 million PS3 systems.

24 16. The video game console and game industry is a multi-billion dollar market. Game
25 console manufacturers such as Defendant fiercely compete with one another to market their
26

27
28 ¹ Open Platform for PLAYSTATION®3, <http://www.playstation.com/ps3-openplatform/index.html>

1 game consoles with the latest features to consumers and to bring lucrative games to the market.
2 The PS3 competes with other video game consoles such as Microsoft's Xbox 360 and the
3 Nintendo Wii. The ability to install other operating systems and the inclusion of a built-in Blu-
4 ray Disc player is unique to the PS3 among other video game consoles.

5
6 **Sony Markets PS3's "Install Other OS" Feature**

7 17. Amongst the PS3's features includes the "Open Platform" or "Install Other OS"
8 feature. Defendant's website provides, "[t]here is more to the PLAYSTATION®3 (PS3™)
9 computer entertainment system than you may have assumed. In addition to playing games,
10 watching movies, listening to music, and viewing photos, you can use the PS3™ system to run
11 the Linux operating system. By installing the Linux operating system, you can use the PS3™
12 system not only as an entry-level personal computer with hundreds of familiar applications for
13 home and office use, but also as a complete development environment for the Cell Broadband
14 Engine™ (Cell/B.E.)."²

15
16 18. The "Install Other OS" feature allowed Plaintiffs and other PS3 users to run a number
17 of web browsers, which provide more functionality than the one browser Defendant has in its
18 native PS3 operating system. For example, users could also run word processor software,
19 spreadsheet software, and email software on other operating systems. The "Install Other OS"
20 feature also allowed Cell programming and the operation of supercomputer clusters.³ The
21 "Other OS" feature essentially allowed users to operate the PS3 like a computer rather than
22 simply a gaming console.
23

24 //

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26 _____
27 ² <http://www.playstation.com/ps3-openplatform/index.html>

28 ³ Cell is a microprocessor which facilitates software development. The PS3 is the most accessible Cell platform. http://en.wikipedia.org/wiki/Cell_%28microprocessor%29.

1 19. Indeed, Sony touted this as a major feature of the PS3. In June 2006, Ken Kutaragi,
2 the president and CEO of Sony Computer Entertainment stated that “[the PS3] is radically
3 different from the previous PlayStation. It is clearly a computer. Indeed, with a game console,
4 you need to take out any unnecessary elements inside the console in order to decrease its cost. . .
5 . This will of course apply to the PS3 as well.”⁴ He also stated that while “[l]owering costs is
6 important but more important is its capacity to evolve.” *Id.* “Everything has been planned and
7 designed so it will become a computer. The previous PlayStation had a memory slot as its
8 unique interface. In contrast, the PS3 features PC standard interfaces. Because they are
9 standard, they are open.” *Id.*

11 20. In February 2007, Phil Harrison, the President of Sony Computer Entertainment
12 Worldwide Studios at the time, stated in an interview with *Newsweek* videogame journalist,
13 N’Gai Croal, that “[o]ne of the most powerful things about the PS3 is the ‘install Other OS’
14 option.”⁵

16 21. The ability to install other operating systems was a built-in component of the core
17 functionality of the PS3 system and users were able to use this feature out of the box.

18 22. At the point of sale, Sony failed to disclose, and/or adequately disclose, to Plaintiffs
19 or Class members that it reserved the right to remove an advertised, built-in feature, like the
20 ability to run other operating systems through a remote firmware update. Defendant’s right to
21 remove the “Install Other OS” feature is not disclosed in Defendant’s Terms of Service or
22 System Software License Agreement.
23

25 _____
26 ⁴ Kutaragi Details PS3 ‘Computer’ Claim, <http://www.edge-online.com/news/kutaragi-details-ps3-computer-claim>

27 ⁵ 20 Questions With Phil Harrison At DICE, <http://kotaku.com/235049/20-questions-with-phil-harrison-at-dice>; DICE 2007 Phil Harrison Keynote Pt. 4,
28 <http://www.gametrailers.com/video/dice-2007-sony/17006>.

1 23. The ability to run the other operating systems was considered to be important and
2 material to users. The PS3 is the only gaming console that allows users to install other operating
3 systems.

4 24. Defendant knew that the ability to run other operating systems was considered to be
5 important and material to users. On or around August 18, 2009, Defendant announced the
6 release of the PS3 "slim" model available on September 1, 2009. The PS3 slim did not include
7 the ability to install other operating systems. However, Defendant's PS3-Linux maintainer,
8 Geoffrey Levand, assured users on via email that "SCE [Sony Computer Entertainment] is
9 committed to continue the support for previously sold models that have the 'Install Other OS'
10 feature and that this feature will not be disabled in future firmware releases."⁶

11
12 **Sony Disables The "Install Other OS" Feature And Other PS3 Functions**

13 25. On or around March 28, 2010, Patrick Sebold, Defendant's Senior Director of
14 Corporate Communications and Social Media, announced on Defendant's blog that Firmware
15 3.21 would be released on April 1, 2010 and its installation "will disable the 'Install Other OS'
16 feature that was available on the PS3 systems prior to the current slimmer models, launched in
17 September 2009. This feature enabled users to install an operating system, but due to security
18 concerns, Sony Computer Entertainment will remove the functionality through the 3.21 system
19 software update."⁷ Defendant did not specify which security concerns Firmware 3.21 would
20 address.
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26 ⁶ Levand's email, as posted by a user on Defendant's blog: Posting of jayyy91, to
27 <http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-33/>
28 (March 29, 2010, 2:50 pm).

⁷ <http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-2/#comments>

1 26. Sebold posted that consumers and organizations that use the “Install Other OS”
2 feature could “choose” not to install Firmware 3.21. However, if a user does not install
3 Firmware 3.21, he or she would lose a number of material PS3 features.⁸

4 27. On or about April 1, 2010, Defendant released Firmware 3.21. Defendant stated that
5 Firmware 3.21 would disable the “Install Other OS” feature, improve playback quality of
6 downloaded PlayStation software from the PlayStation Store, and improve security to address
7 security vulnerabilities that may occur when playing MP4 format video files.⁹

8 28. However, if a user fails to download Firmware 3.21, he or she will lose the following
9 features: (1) the ability to sign in to the PlayStation®Network; (2) the ability to use online
10 features that require a user to sign in to the PSN, such as chat; (3) the ability to use the online
11 features of PS3 format software; (4) playback of PS3 software or Blu-ray Disc videos that
12 require Firmware 3.21 or later; (5) playback of copyright-protected videos that are stored on a
13 media server; (6) use of new features and improvements that are available on PS3 Firmware 3.21
14 or later.¹⁰

15 29. Since the ability to play Blu-ray discs and play games online through the PSN are
16 features unique to the PS3 console and important to users, installing Firmware 3.21 is not
17 optional. Even Defendant’s console games are increasingly reliant on online updates, online
18 content, and online play. Defendant essentially presented users with a Hobson’s Choice, or a
19 “choice” between two equally undesirable alternatives: users would either lose the ability to use
20 other operating systems, an advertised and important feature, or lose the ability to access online,
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25 _____
26 ⁸ <http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-2/#comments>

27 ⁹ <http://us.playstation.com/support/systemupdates/ps3/index.htm>

28 ¹⁰ http://us.playstation.com/support/systemupdates/ps3/ps3_321_update1/index.htm

1 Blu-ray, and gaming features. On one hand, installing Firmware 3.21 renders the PS3 inoperable
2 for its use as a computer; on the other hand, failure to install Firmware 3.21 basically renders a
3 users' PS3 inoperable for its intended purpose as a gaming and Blu-ray Disc console.

4 30. Since Defendant released Firmware 3.21, thousands of users have written complaints
5 on Internet websites and message boards, including the message board Defendant maintains on
6 its website, regarding Firmware 3.21 and its removal of the "Install Other OS" feature.
7

8 **Plaintiffs' Experiences**

9 31. Plaintiff Densmore purchased a PS3 in 2007. Before his purchase, he saw the "Install
10 Other OS" feature advertised on Defendant's website. He also read blogs and forums on the
11 Internet regarding the PS3's "Install Other OS" feature. Plaintiff Densmore purchased the PS3
12 over other gaming consoles in part because of the ability to run the other operating systems. By
13 using the "Install Other OS" feature, Plaintiff Densmore was able to utilize Cell programming.
14 Plaintiff Densmore was required to download Firmware 3.21 in order to continue his ability to
15 sign on to the PSN, play games online, access certain gaming features, and play Blu-ray Discs.
16 Plaintiff Densmore downloaded Firmware 3.21 and lost the "Install Other OS" feature. As such,
17 Plaintiff Densmore has been damaged as a result of Defendant's conduct.
18

19 32. Plaintiff Herz purchased a PS3 on October 11, 2008. Before his purchase, he saw the
20 "Install other OS" feature advertised on Defendant's website. He also read blogs and forums on
21 the Internet regarding the PS3's "Install Other OS" feature. Plaintiff Herz purchased the PS3
22 over other gaming consoles in part because of the ability to run the other operating systems. By
23 using the "Install Other OS" feature, Plaintiff Herz was able to run word Processor software,
24 spreadsheet software, email software, other productivity applications, and make his own
25 programs. He could also log back on to Defendant's native operating system and play against
26 users online. Plaintiff Herz was required to download Firmware 3.21 in order to continue his
27
28

1 ability to sign on to the PSN, play games online, access certain gaming features, and play Blu-
2 ray Discs.. Plaintiff Herz downloaded Firmware 3.21 and lost the "Other OS" feature. As such,
3 Plaintiff Herz has been damaged as a result of Defendant's conduct.

4 **CLASS ACTION ALLEGATIONS**

5
6 33. Plaintiffs Densmore and Herz bring this suit as a class action pursuant to Rule 23 of
7 the Federal Rules of Civil Procedure, on behalf of themselves and all other similarly situated
8 persons. The Class is initially defined as follows:

9 **All persons in the United States who purchased a PS3 from November 17, 2006 to**
10 **March 27, 2010 and continued to own the PS3 on March 27, 2010.**

11 34. Excluded from the class are Defendant and its subsidiaries and affiliates, and
12 Defendant's executives, board members, legal counsel, and their immediate families.

13 35. Plaintiffs reserve the right to amend or modify the Class definition with greater
14 specificity or further division into subclasses or limitation to particular issues.

15 36. Numerosity. The proposed Class is sufficiently numerous, as Defendant has sold
16 millions of PS3 systems to consumers and required those consumers to download the update at
17 issue. The members of the Class are so numerous and dispersed throughout the United States
18 that joinder of all members is impracticable. The Class members can be identified through
19 Defendant's and/or Class members' records.

20 37. Common Questions of Fact and Law. Common questions of fact and law exist as to
21 all members of the Class and predominate over any questions affecting solely individual
22 members of the Class, pursuant to Federal Rule of Civil Procedure 23(b)(3). Questions of fact
23 and law that predominate over any individual issues include:

- 24 a. Whether Defendant breached its contract with users when it removed the "Install
25 Other OS" feature;

- 1 b. Whether Defendant breached the implied covenant of good faith and fair dealing;
- 2 c. Whether Defendant advertised the PS3 as having the "Install Other OS" feature;
- 3 d. Whether Defendant failed to disclose to users that it could remove the "Install
- 4 Other OS" feature
- 5 e. Whether Defendant represented that firmware updates would not disable the
- 6 "Install Other OS" feature;
- 7 f. Whether Defendant knowingly transmitted Firmware 3.21 with the specific intent
- 8 of disabling the "Install Other OS" feature;
- 9 g. Whether Defendant's conduct violated the Consumers Legal Remedies Act,
- 10 California Civil Code sections 1750, *et seq.* ("CLRA");
- 11 h. Whether Defendant's conduct violated the Computer Fraud and Abuse Act, 18
- 12 U.S.C. § 1030;
- 13 i. Whether Defendant's conduct violated California's Unfair Competition Laws,
- 14 California Business and Professions Code sections 17200, *et seq.* ("UCL");
- 15 j. Whether Defendant's actions violated other common law and statutory duties;
- 16 k. Whether Plaintiffs and the members of the Class sustained damage and
- 17 ascertainable loss as a result of Defendant's conduct as alleged herein;
- 18 l. The amount of relief to which the Class is entitled; and
- 19 m. The amount of attorneys' fees, prejudgment interest, and costs of suit to which the
- 20 Class is entitled.
- 21
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- 23

24 38. Typicality. Plaintiffs' claims are typical of the claims of Class members because
25 Plaintiffs and the Class sustained damages arising out of the Defendant's wrongful conduct as
26 detailed herein. Specifically, Plaintiffs and Class members' claims arise from Defendant taking
27 away an advertised and paid-for feature on their PS3 consoles.
28

1 39. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class and
2 has retained counsel competent and experienced in class action lawsuits. Plaintiffs have no
3 interests antagonistic to or in conflict with those of Class members and therefore will be
4 adequate as representatives for the Class.

5 40. Superiority. A class action is superior to other available methods for the fair and
6 efficient adjudication of this controversy since joinder of all the members of the Class is
7 impracticable. Furthermore, the adjudication of this controversy through a class action will
8 avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein.
9 There will be no difficulty in the management of this action as a class action.
10

11 **CAUSES OF ACTION**

12 **COUNT I**

13 **Breach of Contract**

14 41. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
15 herein.
16

17 42. Plaintiffs and Class members purchased the PS3 with the expectation that the PS3
18 included the "Install Other OS" function and that (1) this function would remain for the life of
19 the product, and (2) Defendant would not intentionally remove this function. Plaintiffs and Class
20 members also purchased the PS3 with the expectation that the PS3 would allow them to sign on
21 to the PSN, play online games, access other online features, and play PS3 games or Blu-Ray
22 discs, as well as operate programs through the "Install Other OS" function.
23

24 43. Plaintiffs and Class members' purchase of the PS3 constituted a contract.

25 44. Plaintiffs and Class members fulfilled their obligations under the contract by paying
26 the purchase price for the PS3.
27
28

1 45. Defendant breached the contract by issuing Firmware 3.21 and forcing users to
2 choose between either losing the "Install Other OS" function or losing the ability to sign on to
3 the PSN, play online games, access other online features, and play PS3 games or Blu-Ray discs
4 requiring Firmware 3.21 or higher.

5
6 46. As a direct and proximate result of Defendant's breach of the contract, Plaintiffs and
7 Class members have been damaged because they no longer have the PS3 features for which they
8 paid.

9 **COUNT II**

10 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

11 47. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
12 herein.

13
14 48. Plaintiffs and Class members purchased the PS3 with the expectation that the PS3
15 included the "Install Other OS" function and that (1) this function would remain for the life of
16 the product, and (2) Defendant would not intentionally remove this function. Plaintiffs and Class
17 members also purchased the PS3 with the expectation that the PS3 would allow them to sign on
18 to the PSN, play online games, access other online features, and play PS3 games or Blu-Ray
19 discs, as well as operate programs through the "Install Other OS" function.

20
21 49. Plaintiffs and Class members fulfilled their obligations under the contract by paying
22 the purchase price for the PS3.

23 50. Defendant issued Firmware 3.21 and forced users to choose between either losing the
24 "Install Other OS" function or losing the ability to sign on to the PSN, play online games, access
25 other online features, and play PS3 games or Blu-Ray discs requiring Firmware 3.21 or higher.
26 Defendant's actions constitute a breach of the implied covenant of good faith and fair dealing.
27
28

1 51. As a direct and proximate result of Defendant's breach of contract, Plaintiffs and
2 Class members have been damaged because they no longer have the PS3 features for which they
3 paid.

4 **COUNT III**

5 **Trespass to Chattels**

6
7 52. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
8 herein.

9 53. Defendant acted deliberately and intentionally to remove the "Install Other OS"
10 functionality, an advertised feature that Plaintiffs and Class members paid for. Defendant
11 required Plaintiffs and Class members to install Firmware 3.21 with the threat that other
12 advertised and paid-for features, such as the ability to play online games and Blu-ray Discs,
13 would be lost if Plaintiffs and Class members did not install Firmware 3.21. Defendant
14 intentionally interfered with the possession of personal property.
15

16 54. Because a failure to install Firmware 3.21 results in the inoperability of a users' PS3
17 system, Plaintiffs and Class members did not consent to the trespass.

18 **COUNT IV**

19 **Unjust Enrichment**

20
21 55. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
22 herein.

23 56. Defendant has been monetarily enriched as a result of activities as alleged herein.

24 57. Defendant unlawfully received monies that would not have been obtained but for
25 Defendant's acts as alleged herein, at the expense of the Class.

26 58. In purchasing the PS3, Plaintiffs and each member of the Class paid for the ability to
27 use the "Install Other OS" feature, the ability to Blu-ray Discs, and the ability to access the PSN
28

1 for online gaming and network features. By issuing Firmware 3.21, regardless of whether a user
2 downloads the software, he or she will lose complete functionality of his or her PS3 console as it
3 was advertised.

4 59. Defendant has been unjustly enriched as a result of the acts as alleged herein, at the
5 expense of the Class.

6 60. Defendant lacks any legal justification for having engaged in a course of conduct as
7 alleged herein at the expense of Plaintiff and the Class.

8
9 **COUNT V**

10 **Violation of the Consumers Legal Remedies Act,**

11 **Cal. Civ. Code §§ 1750, et seq.**

12 61. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
13 herein.

14 62. Defendant is a “person” within the meaning of California Civil Code sections 1761(c)
15 and 1770, and provides “goods” within the meaning of Civil Code sections 1761(a) and 1770.

16 63. Defendant’s customers, including Plaintiffs and Class members, are “consumers”
17 within the meaning of California Civil Code sections 1761(d) and 1770. Each purchase of a PS3
18 system by Plaintiffs and each Class member constitutes a “transaction” within the meaning of
19 Civil Code sections 1761(e) and 1770.

20 64. As set forth herein, Defendant’s acts, practices, representations, omissions and course
21 of conduct, including its dissemination of Firmware 3.21 to disable the “Install Other OS”
22 feature, violate sections 1770(a)(5), (a)(7), and (a)(9) of the Consumers Legal Remedies Act in
23 that: (a) Defendant represented that goods or services had characteristics, uses, benefits or
24 quantities which they do not have; (b) Defendant represented that goods or services were of a
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1 particular standard, quality or grade when they were another; and (c) Defendant advertised goods
2 with intent not to sell them as advertised.

3 65. The "Install Other OS" feature was material and important to a consumer in
4 purchasing the PS3. Plaintiffs relied on Defendant's representations that the PS3 included the
5 ability to install other operating systems. Plaintiffs and Class members purchased the PS3 in part
6 because of Defendant's representations and omissions.

7
8 66. Defendant failed to disclose, and/or inadequately disclosed, that it could disable the
9 advertised "Install Other OS" feature. Defendant also represented that it would not us a
10 firmware update to disable the "Install Other OS" feature.

11 67. Pursuant to the provisions of California Civil Code section 1780, Plaintiffs seek
12 injunctive relief in the form of an order requiring Defendant to (1) refrain from requiring users to
13 install updates that would remove advertised and paid-for features from their PS3 consoles; and
14 (2) restore users' capability to "Install Other OS."

15
16 68. Plaintiffs, on behalf of themselves and all Class members, will comply with the
17 preliminary notice provision of California Civil Code section 1782(a). If Defendant does not
18 provide Plaintiffs' requested injunctive relief thirty days after the commencement of this action,
19 Plaintiffs will amend their complaint and include a request for damages in accordance with
20 California Civil Code section 1782(d).

21
22 **COUNT VI**

23 **Violation of the Computer Fraud and Abuse Act**

24 **18 U.S.C. § 1030**

25 69. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
26 herein.

27 70. The PS3 is a "computer" within the meaning of 18 U.S.C. § 1030(e)(1).
28

1 71. Plaintiffs' and Class members' PS3 consoles are used in interstate commerce or
2 communication, and are "protected computers" within the meaning of 18 U.S.C. §
3 1030(e)(2)(B).

4 72. Defendant knowingly caused the transmission of software and intentionally caused
5 damage without authorization to Plaintiffs' and Class members' PS3 consoles; and/or
6 intentionally accessed Plaintiffs' and Class members' PS3 consoles without authorization and
7 recklessly caused damage; and/or intentionally accessed Plaintiffs' and Class members' PS3
8 consoles without authorization and caused damage and loss.

10 73. Defendant knowingly caused the transmission of software code and intentionally
11 caused damage without authorization to Plaintiffs' and Class members' PS3 consoles.
12 Defendant knowingly and admittedly released Firmware 3.21 for the specific purpose of
13 removing the "Install Other OS" feature – a feature that Defendant had advertised as part of the
14 console and that Plaintiffs and Class members had paid for. As a result of this knowing
15 transmission, Defendant intentionally caused damage by disabling the "Install Other OS" feature.
16 The damage was unauthorized because a failure to download Firmware 3.21 would result in the
17 loss of other features, as described herein.

19 74. Defendant intentionally accessed Plaintiffs' and the Class' PS3 systems and
20 transmitted software without authorization and recklessly caused damage.

22 75. Defendant intentionally accessed Plaintiffs and the Class' PS3 systems without
23 authorization and caused damage and loss. Although Plaintiffs and Class members may have
24 authorized a firmware update for security reasons, they did not authorize the disabling of the
25 "Install Other OS" feature. Defendants did not present Plaintiffs and Class members with any
26 actual choice because either downloading Firmware 3.21 or not downloading the update would
27 both result in disabling certain advertised features. Defendant's unauthorized access caused
28

1 damage to Plaintiffs' and Class members' PS3 consoles and caused Plaintiffs and Class members
2 to suffer losses, including, but not limited to, the ability use other operating systems and the
3 money paid for this feature. Plaintiffs' and Class members' consoles were reduced in value by
4 Defendant's conduct because a gaming console that allows Defendant to remove and disable
5 advertised and material features is worth less than a gaming console that does not allow these
6 unconsented-to removals.
7

8 76. Through Defendant's intentional transmission of the software and the unauthorized
9 access of Plaintiffs' and Class members' PS3 systems, Defendant impaired the integrity of
10 Plaintiffs' and other individual Class members' systems and removed a feature that Plaintiffs and
11 Class members had paid for. As a direct result of engaging in such acts, Defendant caused
12 damage exceeding an aggregate of \$5,000 in value during a one-year period.
13

14 **COUNT VII**

15 **Violation of the False Advertising Law**

16 **Cal. Bus. and Prof. Code §§ 17200, et seq.**

17 77. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
18 herein.

19 78. The conduct and actions of Defendant complained of herein constitute false
20 advertising in violation of the False Advertising Law ("FAL"). Cal. Bus. & Prof. Code §§
21 17500, et seq.
22

23 79. Among other things, Defendant made material representations and failed to disclose
24 or adequately disclose material information regarding the "Install Other OS" feature, the PS3,
25 and Defendant's right to disable this feature, which Defendant knew, or should have known,
26 were likely to cause reasonable consumers to buy PS3s in reliance upon said representation.
27
28

1 Defendant intended for Plaintiff and Class members to rely on these representations and Plaintiff
2 and Class members did rely on Defendant's representations.

3 80. Defendant committed such violations of the FAL with actual knowledge or
4 knowledge fairly implied on the basis of objective circumstances.

5 81. As a result of Defendant's wrongful conduct, Plaintiffs have suffered injury in fact
6 and lost money and/or property.
7

8 **COUNT VIII**

9 **Violation of the Unfair Competition Law,**

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

11 82. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
12 herein.

13 83. The acts and practices engaged in by Defendant, and described herein, constitute
14 unlawful business practices in that Defendant's practices, as described herein, constitute a breach
15 of contract and breach of the covenant of good faith and fair dealing, violate the California
16 Consumers Legal Remedies Act, California Civil Code sections 1750, *et seq.*, the Consumer
17 Fraud and Abuse Act, 18 U.S.C. § 1030, the FAL, and the common law of trespass to chattels
18 and unjust enrichment.
19

20 84. The acts and practices engaged by Defendant, and described herein, constitute unfair
21 business practices because the justification for Defendant's conduct is outweighed by the gravity
22 of the consequences to Plaintiffs and Class members and Defendant's conduct is immoral,
23 unethical, oppressive, unscrupulous or substantially injurious to Plaintiffs and Class members.
24 In purchasing the PS3, Plaintiffs and each member of the Class paid for the ability to use the
25 "Install Other OS" feature, the ability to play Blu-ray Discs, and the ability to access the PSN for
26 online gaming and network features. By issuing Firmware 3.21, regardless of whether a user
27
28

1 downloads the software, he or she will lose functionality of his or her PS3 console. Defendant's
2 actions violate the spirit of the laws described in Paragraph 82.

3 85. The acts and practices engaged by Defendant, and described herein, constitute
4 fraudulent business practices because Defendant advertised the PS3 as including the "Install
5 Other OS" feature and failed to disclose, and/or inadequately disclosed, that Defendant could
6 remove the advertised "Install Other OS" feature by way of firmware update. Defendant's
7 conduct and/or omissions were likely to deceive consumers.
8

9 86. Plaintiffs and all other Class members have suffered injury in fact and have lost
10 money and/or property as a result of Defendant's unfair competition, as more fully set forth
11 herein.

12 87. Pursuant to California Business & Professions Code section 17203, Plaintiffs and
13 Class members are therefore entitled to equitable relief, including restitution of all monies paid
14 to Defendant, disgorgement of all profits accruing to Defendant because of its unlawful and
15 unfair business practices, a permanent injunction enjoining Defendant from its unlawful and
16 unfair business activities, and appropriate declaratory relief as described herein.
17

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and the Class as
20 follows:

21 A. For an order certifying the proposed Class alleged herein under Federal Rule of Civil
22 Procedure 23 and appointing Plaintiffs Densmore and Herz and their counsel of record to
23 represent said Class;
24

25 B. For an order awarding suitable injunctive and declaratory relief;

26 C. For on order directing restitution and/or disgorgement;
27
28

1 D. For an order awarding Plaintiffs and Class members damages against Defendant in an
2 amount to be determined at trial, together with prejudgment interest at the maximum rate
3 allowable by law;

4 E. For an order awarding Plaintiffs and the Class members the reasonable costs and
5 expenses of suit, including attorneys' fees, and expert witness fees; and
6

7 F. For an order granting any additional legal and/or equitable relief this Court deems proper.

8 **JURY TRIAL DEMANDED**

9 Plaintiffs hereby demand a trial by jury.

10 Dated: May 5, 2010

Respectfully submitted,

11 **FINKELSTEIN THOMPSON LLP**

12
13 By: 
14 Tracy Tien

15 Rosemary M. Rivas
16 Mark Punzalan
17 100 Bush St., Suite 1450
18 San Francisco, California 94104
19 Telephone: (415) 398-8700
20 Facsimile: (415) 398-8704

21 Douglas G. Thompson
22 Mila F. Bartos
23 **FINKELSTEIN THOMPSON LLP**
24 The Duval Foundry
25 1050 30th Street, NW
26 Washington, D.C. 20007
27 Telephone: (202) 337-8000
28 Facsimile: (202) 337-8090

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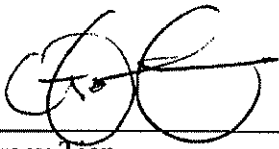
AFFIDAVIT OF TRACY TIEN

I, Tracy Tien, declare as follows:

1. I am an associate with the law firm Finkelstein Thompson LLP, counsel for Plaintiff Todd Densmore and Plaintiff Antal Herz in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and also upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Defendant's principal place of business is within this District, as alleged in the accompanying Class Action Complaint.

I declare under penalty of perjury under the laws of the United States on this 5 day of May 2010 in San Francisco, California that the foregoing is true and correct.



Tracy Tien

JURAT

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SUBSCRIBED AND SWORN TO (OR AFFIRMED) BEFORE ME,
MARLYN ANO, NOTARY PUBLIC, THIS May 5, 2010
BY: Tracy Tien,
PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO
BE THE PERSON(S) WHO APPEARED BEFORE ME.

M. An
MARLYN ANO, Notary Public



OPTIONAL INFORMATION

TITLE OF DOCUMENT: Class Action Complaint
Demand For Jury Trial
DOCUMENT DATE: 5/5/10
NUMBER OF PAGES: 22
OTHER SIGNERS: None other

EXHIBIT 5

FILED
2010 MAY -6 A 10-06
RICHARD W. WIERTEG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 James A. Quadra (SBN 131084)
quadra@calvoclarck.com
2 William N. Hebert (SBN 136099)
whebert@calvoclarck.com
3 Kevin O. Moon (SBN 246792)
kmoon@calvoclarck.com
4 CALVO & CLARK, LLP
One Lombard Street, Second Floor
5 San Francisco, CA 94111
Tel: (415) 374-8370
6 Fax: (415) 374-8373

7 Attorneys for Plaintiff KEITH WRIGHT,
and all others similarly situated
8

9
10 **UNITED STATES DISTRICT COURT**
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

JL

11
12 KEITH WRIGHT, on behalf of himself and all
others similarly situated,

Case No. **CV 10-1975**

13 Plaintiff(s),

NOTICE OF RELATED CASES

14 v.

15 SONY COMPUTER ENTERTAINMENT
16 AMERICA INC.; and SONY COMPUTER
ENTERTAINMENT AMERICA, LLC.

17 Defendant.
18
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1 **FOR COURT AND PARTIES:**

2 PLEASE TAKE NOTICE THAT pursuant to Civil L.R. 3-12, this action is related to
3 the following case pending in the Northern District: *Anthony Ventura, on behalf of himself and*
4 *all others similarly situated v. Sony Computer Entertainment America, Inc., Case No. CV-10-*
5 *1811-EMC*: The actions concern substantially the same parties, property, transactions or
6 events; and it appears likely that there will be an unduly burdensome duplication of labor and
7 expense or conflicting results if the cases are conducted before different Judges.

8
9 DATED: May 06, 2010

10 CALVO & CLARK, LLP

11
12 By: 

13 James A. Quadra

14 *Attorneys for Plaintiff*
15 KEITH WRIGHT
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NOTICE OF RELATED CASES

EXHIBIT 6

1 Charles S. Bishop, CSB No. 99335
2 cbishop@commbish.com
3 Connor & Bishop
4 44 Montgomery Street, Suite 1750
5 San Francisco, CA 94104
6 Telephone 415.434.3006
7 Facsimile 415.434.1445
8 Attorney for Plaintiffs

ORIGINAL
FILED
2010 APR 30 P 4:11
RICHARD J. LINDNER
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 CV 10 1897
11 CASE NO. _____

11 JASON BAKER, SEAN BOSQUETT,
12 FRANK BACHMAN, PAUL GRAHAM, and
13 PAUL VANNATTA, Individually and on
14 Behalf of All Others Similarly Situated,

14 Plaintiffs,

15 vs.

17 SONY COMPUTER ENTERTAINMENT
18 AMERICA, LLC successor to SONY
19 COMPUTER ENTERTAINMENT
20 AMERICA, INC.

19 Defendant.

CLASS ACTION

SC

PLAINTIFFS' NOTICE OF RELATED CASE

21
22 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES AND
23 THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that pursuant to Local Rule 3-12, plaintiffs state that the
25 following is or may be related to the instant matter:

- 26 • Anthony Ventura v. Sony Computer Entertainment America, Inc.,
27 United States District Court; Northern District of California
28 Action No. CV 10 1811 EMC.

CLASS ACTION PLAINTIFFS' NOTICE OF RELATED CASE


1 This instant matter may qualify as a "related case" to the above-referenced action because each
2 plaintiff has alleged that SONY COMPUTER ENTERTAINMENT AMERICA, LLC successor
3 to SONY COMPUTER ENTERTAINMENT AMERICA, INC. engaged in improper business
4 practices relating to PlayStation 3 game consoles, to their damage. Each plaintiff seeks to
5 represent a class of all similarly situated persons.

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Dated: April 30, 2010

CONNOR & BISHOP

By:


Charles S. Bishop
Attorneys for Plaintiffs

CLASS ACTION PLAINTIFFS' NOTICE OF RELATED CASE

EXHIBIT 7

10.22 Coordination in Multiparty Litigation—Lead/Liaison Counsel and Committees

- .221 Organizational Structures 24
- .222 Powers and Responsibilities 26
- .223 Compensation 26
- .224 Court’s Responsibilities 26
- .225 Related Litigation 28

Complex litigation often involves numerous parties with common or similar interests but separate counsel. Traditional procedures in which all papers and documents are served on all attorneys, and each attorney files motions, presents arguments, and examines witnesses, may waste time and money, confuse and misdirect the litigation, and burden the court unnecessarily. Instituting special procedures for coordination of counsel early in the litigation will help to avoid these problems.

In some cases the attorneys coordinate their activities without the court’s assistance, and such efforts should be encouraged. More often, however, the court will need to institute procedures under which one or more attorneys are selected and authorized to act on behalf of other counsel and their clients with respect to specified aspects of the litigation. To do so, invite submissions and suggestions from all counsel and conduct an independent review (usually a hearing is advisable) to ensure that counsel appointed to leading roles are qualified and responsible, that they will fairly and adequately represent all of the parties on their side, and that their charges will be reasonable. Counsel designated by the court also assume a responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all parties and parties’ counsel.

10.221 Organizational Structures

Attorneys designated by the court to act on behalf of other counsel and parties in addition to their own clients (referred to collectively as “designated counsel”) generally fall into one of the following categories:

- *Liaison counsel.* Charged with essentially administrative matters, such as communications between the court and other counsel (including receiving and distributing notices, orders, motions, and briefs on behalf of the group), convening meetings of counsel, advising parties of developments, and otherwise assisting in the coordination of activities and positions. Such counsel may act for the group in managing document depositories and in resolving scheduling conflicts. Liaison counsel will usually have offices in the same locality as the court. The court may appoint (or the parties may select) a liaison for each side,

and if their functions are strictly limited to administrative matters, they need not be attorneys.⁶⁰

- *Lead counsel.* Charged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation. Typically they act for the group—either personally or by coordinating the efforts of others—in presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.
- *Trial counsel.* Serve as principal attorneys at trial for the group and organize and coordinate the work of the other attorneys on the trial team.
- *Committees of counsel.* Often called steering committees, coordinating committees, management committees, executive committees, discovery committees, or trial teams. Committees are most commonly needed when group members' interests and positions are sufficiently dissimilar to justify giving them representation in decision making. The court or lead counsel may task committees with preparing briefs or conducting portions of the discovery program if one lawyer cannot do so adequately. Committees of counsel can sometimes lead to substantially increased costs, and they should try to avoid unnecessary duplication of efforts and control fees and expenses. See section 14.21 on controlling attorneys' fees.

The types of appointments and assignments of responsibilities will depend on many factors. The most important is achieving efficiency and economy without jeopardizing fairness to the parties. Depending on the number and complexity of different interests represented, both lead and liaison counsel may be appointed for one side, with only liaison counsel appointed for the other. One attorney or several may serve as liaison, lead, and trial counsel. The functions of lead counsel may be divided among several attorneys, but the number should not be so large as to defeat the purpose of making such appointments.

60. See *In re San Juan Dupont Plaza Hotel Fire Litig.*, MDL No. 721, 1989 WL 168401, at *19–20 (D.P.R. Dec. 2, 1988) (defining duties of “liaison persons” for plaintiffs and defendants).

10.222 Powers and Responsibilities

The functions of lead, liaison, and trial counsel, and of each committee, should be stated in either a court order or a separate document drafted by counsel for judicial review and approval.⁶¹ This document will inform other counsel and parties of the scope of designated counsel's authority and define responsibilities within the group. However, it is usually impractical and unwise for the court to spell out in detail the functions assigned or to specify the particular decisions that designated counsel may make unilaterally and those that require an affected party's concurrence. To avoid controversy over the interpretation of the terms of the court's appointment order, designated counsel should seek consensus among the attorneys (and any unrepresented parties) when making decisions that may have a critical impact on the litigation.

Counsel in leadership positions should keep the other attorneys in the group advised of the progress of the litigation and consult them about decisions significantly affecting their clients. Counsel must use their judgment about limits on this communication; too much communication may defeat the objectives of efficiency and economy, while too little may prejudice the interests of the parties. Communication among the various allied counsel and their respective clients should not be treated as waiving work-product protection or the attorney–client privilege, and a specific court order on this point may be helpful.⁶²

10.223 Compensation

See section 14.215 for guidance on determining compensation and establishing terms and procedures for it early in the litigation.

10.224 Court's Responsibilities

Few decisions by the court in complex litigation are as difficult and sensitive as the appointment of designated counsel. There is often intense competition for appointment by the court as designated counsel, an appointment that may implicitly promise large fees and a prominent role in the litigation. Side agreements among attorneys also may have a significant effect on positions taken in the proceedings. At the same time, because appointment of designated counsel will alter the usual dynamics of client representation in important ways, attorneys will have legitimate concerns that their clients' interests be adequately represented.

61. See Sample Order *infra* section 40.22.

62. See *id.* ¶ 5.

For these reasons, the judge is advised to take an active part in the decision on the appointment of counsel. Deferring to proposals by counsel without independent examination, even those that seem to have the concurrence of a majority of those affected, invites problems down the road if designated counsel turn out to be unwilling or unable to discharge their responsibilities satisfactorily or if they incur excessive costs. It is important to assess the following factors:

- qualifications, functions, organization, and compensation of designated counsel;
- whether there has been full disclosure of all agreements and understandings among counsel;
- would-be designated attorneys' competence for assignments;
- whether there are clear and satisfactory guidelines for compensation and reimbursement, and whether the arrangements for coordination among counsel are fair, reasonable, and efficient;
- whether designated counsel fairly represent the various interests in the litigation—where diverse interests exist among the parties, the court may designate a committee of counsel representing different interests;
- the attorneys' resources, commitment, and qualifications to accomplish the assigned tasks; and
- the attorneys' ability to command the respect of their colleagues and work cooperatively with opposing counsel and the court—experience in similar roles in other litigation may be useful, but an attorney may have generated personal antagonisms during prior proceedings that will undermine his or her effectiveness in the present case.

Although the court should move expeditiously and avoid unnecessary delay, an evidentiary hearing may be needed to bring all relevant facts to light or to allow counsel to state their case for appointment and answer questions from the court about their qualifications (the court may call for the submission of résumés and other relevant information). Such a hearing is particularly appropriate when the court is unfamiliar with the attorneys seeking appointment. The court should inquire as to normal or anticipated billing rates, define record-keeping requirements, and establish guidelines, methods, or limitations to govern the award of fees.⁶³ While it may be appropriate and possibly even beneficial for several firms to divide work among themselves,⁶⁴ such an ar-

63. See *infra* section 14.21.

64. See *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 77 (S.D.N.Y. 2000); *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 584 (3d Cir. 1984).

rangement should be necessary, not simply the result of a bargain among the attorneys.⁶⁵

The court's responsibilities are heightened in class action litigation, where the judge must approve counsel for the class (see section 21.27). In litigation involving both class and individual claims, class and individual counsel will need to coordinate.

10.225 Related Litigation

If related litigation is pending in other federal or state courts, consider the feasibility of coordination among counsel in the various cases. See sections 20.14, 20.31. Consultation with other judges may bring about the designation of common committees or of counsel and joint or parallel orders governing their function and compensation.⁶⁶ Where that is not feasible, the judge may direct counsel to coordinate with the attorneys in the other cases to reduce duplication and potential conflicts and to coordinate and share resources. In any event, the judges involved should exchange information and copies of orders that might affect proceedings in their courts. See generally section 20, multiple jurisdiction litigation.

In approaching these matters, consider also the status of the respective actions (some may be close to trial while others are in their early stages). Counsel seeking a more prominent and lucrative role may have filed actions in other courts.

10.23 Withdrawal and Disqualification

In view of the number and dispersion of parties and interests in complex litigation, the court should remind counsel to be alert to present or potential conflicts of interest.⁶⁷

It is advisable to deny motions for disqualification that claim the attorney may be called as a witness if such testimony probably will not be necessary and prejudice to the client will probably be minor. Disqualification on the ground that an attorney is also a witness may sometimes be denied where it would cause "substantial hardship" to the client. This exception is generally invoked

65. See, e.g., *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71 (S.D.N.Y. 2000); *Smiley v. Sincoff*, 958 F.2d 498 (2d Cir. 1992); *In re Fine Paper Antitrust Litig.*, 98 F.R.D. 48 (E.D. Pa. 1983), *aff'd in part and rev'd in part*, 751 F.2d 562 (3d Cir. 1984).

66. See *infra* section 40.51.

67. See Model Rules of Prof'l Conduct R. 1.7–1.9 (2002); Model Code of Prof'l Responsibility DR 5-101(A), 5-104(A), 5-105(A) (1981); see also Model Rules of Prof'l Conduct R. 3.7 (2002); Model Code of Prof'l Responsibility DR 5-102 (1981) (lawyer as witness).

40.22 Responsibilities of Designated Counsel

It is ORDERED:

1. *Plaintiffs' Lead Counsel.* Plaintiffs' lead counsel¹ shall be generally responsible for coordinating the activities of plaintiffs during pretrial proceedings and shall
 - (a) determine (after such consultation with other members of Plaintiffs' Steering Committee and other cocounsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the plaintiffs on all matters arising during pretrial proceedings;
 - (b) coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(b)(1), 26(2), and 26(g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
 - (c) conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized;
 - (d) delegate specific tasks to other counsel or committees of counsel,² as authorized by the court, in a manner to ensure that pretrial preparation for the plaintiffs is conducted efficiently and effectively;
 - (e) enter into stipulations with opposing counsel as necessary for the conduct of the litigation;
 - (f) prepare and distribute periodic status reports to the parties;
 - (g) maintain adequate time and disbursement records covering services as lead counsel;
 - (h) monitor the activities of cocounsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided; and
 - (i) perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the court.

Counsel for plaintiffs who disagree with lead counsel (or those acting on behalf of lead counsel) or who have individual or divergent positions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their clients as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of lead counsel.
2. *Plaintiffs' Liaison Counsel.* Plaintiffs' liaison counsel shall
 - (a) maintain and distribute to cocounsel and to defendants' liaison counsel an up-to-date service list;
 - (b) receive and, as appropriate, distribute to cocounsel orders from the court [and documents from opposing parties and counsel];

- (c) maintain and make available to cocounsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository]; and
 - (d) establish and maintain a document depository [see section 40.261].
3. *Plaintiffs' Steering Committee.* The other members of plaintiffs' steering committee shall from time to time consult with plaintiffs' lead and liaison counsel in coordinating the plaintiffs' pretrial activities and in planning for trial.
 4. *Defendants' Liaison Counsel.* Defendants' liaison counsel shall
 - (a) maintain and distribute to cocounsel and to plaintiffs' liaison counsel an up-to-date service list;
 - (b) receive and, as appropriate, distribute to cocounsel orders from the court [and documents from opposing parties and counsel];
 - (c) maintain and make available to cocounsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository];
 - (d) establish and maintain a document depository [see section 40.261]; and
 - (e) call meetings of cocounsel for the purpose of coordinating discovery, presentations at pretrial conferences, and other pretrial activities.
 5. *Privileges Preserved.* No communication among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

Dated: _____

United States District Judge*Notes:*

1. In litigation involving different types of claims, such as economic injury and personal injury claims, the court and counsel may wish to create parallel structures for the cases.
2. In litigation involving cases in state and federal courts, the court and counsel should consider appointing a state-federal liaison committee to coordinate pretrial and trial activity, particularly discovery.