

Rosemary M. Rivas (State Bar No. 209147)  
rrivas@finkelsteinthompson.com

Mark Punzalan (State Bar No. 247599)  
mpunzalan@finkelsteinthompson.com

Tracy Tien (State Bar No. 253930)  
ttien@finkelsteinthompson.com

**FINKELSTEIN THOMPSON LLP**

100 Bush Street, Suite 1450

San Francisco, CA 94104

Telephone: (415) 398-8700

Facsimile: (415) 398-8704

Counsel for Plaintiffs Todd Densmore and Antal Herz

[Additional Counsel Listed on Signature Page]

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

ANTHONY VENTURA, on behalf of himself  
and all others similarly situated,

Plaintiff,

SONY COMPUTER ENTERTAINMENT  
AMERICA INC.,

Case No. CV 10-1811 EMC

**ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES  
SHOULD BE RELATED  
(Civil Local Rule 3-12)**

The Honorable Edward M. Chen

This document also relates to:

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

Plaintiffs,

v.

SONY COMPUTER ENTERTAINMENT  
AMERICA, INC., a Delaware corporation,

Defendant.

Case No. CV 10-1945 EDL

The Honorable Elizabeth D. Laporte

**ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED  
CASE NO. CV 10-1811 EMC**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 5, 2010, the case titled *Densmore et al v. Sony*  
3 *Computer Entertainment America, Inc. (“Densmore”)*, CV 10-1945 EDL was filed in the United  
4 States District Court for the Northern District of California and assigned to the Honorable  
5 Elizabeth D. Laporte.

6 Pursuant to Civil Local Rule 3-12, Plaintiffs Densmore and Herz (“Plaintiffs”) submit  
7 this motion for the Court to consider whether the *Densmore* action should be related to the action  
8 titled *Ventura v. Sony Computer Entertainment America Inc (“Ventura”)*, CV 10-1811 EMC.  
9 Copies of the *Densmore* and *Ventura* Complaints are attached as Exhibits 1 and 2 to the  
10 accompanying Declaration of Tracy Tien.<sup>1</sup>

11 Local Rule 3-12(a) provides that actions are related to another when: “(1) The actions  
12 concern substantially the same parties, property, transaction or event; and (2) It appears likely  
13 that there will be an unduly burdensome duplication of labor and expense or conflicting results if  
14 the cases are conducted before different Judges.” *Densmore* and *Ventura* meet the criteria and  
15 should be related because they concern substantially the same parties, property, transaction or  
16 event. Both cases are class actions brought on behalf of Sony PlayStation 3 (“PS3”) owners and  
17 allege violations against Defendant Sony Computer Entertainment America Inc. (“Sony”) for  
18 Sony’s unlawful removal of PS3 features that Sony had advertised and consumers had paid for.

19 Both *Densmore* and *Ventura* allege that Sony sold PS3 gaming consoles that included an  
20 advertised feature, “Install Other OS” feature, which allowed users to install operating systems.  
21 *See Densmore* Compl. ¶¶ 17-18; *Ventura* Compl. ¶¶ 13. The “Install Other OS” feature allowed  
22 users to run web browsers and essentially run programs and operate the PS3 like a computer.

23 \_\_\_\_\_  
24 <sup>1</sup> On May 14, 2010, Plaintiff Jason Baker in the action, *Baker et al v. Sony Computer*  
25 *Entertainment America, LLC*, Case No. 10-cv-01897-SC, filed an Administrative Motion to  
26 Relate *Baker* to *Ventura* Case.

26 Plaintiffs Densmore and Herz are also aware of another related action, *Wright v. Sony Computer*  
27 *Entertainment America, Inc. et al*, Case No. 10-cv-01975-JL.

1 *Densmore* Compl. ¶¶17-21, 31-32; *Ventura* Compl. ¶ 14-22. Sony advertised the “Install Other  
2 OS” as being an important feature to the PS3. *Densmore* Compl. ¶¶ 19-24; *Ventura* Compl. ¶¶  
3 14-16. On April 1, 2010, Sony released an update, Firmware 3.21. *Densmore* Compl. ¶ 27;  
4 *Ventura* Compl. ¶ 24. Users are required to install Firmware 3.21 if they wish to maintain  
5 certain functions PS3 functions for which they paid, such as the ability to play Blu-ray discs and  
6 play games online. *Densmore* Compl. ¶¶ 26, 28-29; *Ventura* Compl. ¶ 26-29. Failure to install  
7 Firmware 3.21 would cause users to lose PS3 functionality. *Id.* However, if users do install  
8 Firmware 3.21, they lose the “Install Other OS” feature, another paid-for and advertised PS3  
9 function. *Densmore* Compl. ¶¶ 27-29; *Ventura* Compl. ¶ 23-24.

10 *Densmore* is brought on behalf “All persons in the United States who purchased a PS3  
11 from November 17, 2006 to March 27, 2010 and continued to own the PS3 on March 27, 2010.”  
12 *Densmore* Compl. ¶ 33. *Ventura* is brought on behalf of “all persons who purchased a PS3  
13 during the period November 17, 2006 to March 27, 2010 and who did not resell their PS3 before  
14 March 27, 2010.” *Ventura* Compl. ¶ 32.

15 *Densmore* and *Ventura* both name Sony as the defendant and concern the same property,  
16 transaction, and event: namely the PS3 gaming console and Sony’s removal of the “Install Other  
17 OS” feature via Firmware 3.21. Furthermore, both cases state claims for breach of contract,  
18 breach of the covenant of good faith and fair dealing, unjust enrichment, and violations of the  
19 Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*) and California Unfair  
20 Competition Law (Cal. Bus. and Prof. Code §§ 17200, *et seq.*). *Densmore* Compl. ¶¶ 41-51, 55-  
21 68, 82-87; *Ventura* Compl. ¶¶ 35-71.<sup>2</sup>

22 It appears likely that there will be an unduly burdensome duplication of labor and  
23 expense or the possibility of conflicting results if the cases are handled by different judges.  
24 Since both cases arise from the same practices by Sony and include similar allegations, the  
25

---

26 <sup>2</sup> In addition, the *Densmore* Complaint asserts claims for trespass to chattels, and violation of the  
27 Computer Fraud and Abuse Act (18 U.S.C. ¶ 1030) and California’s False Advertising Law (Cal.  
28 Bus. and Prof. Code §§ 17500 *et seq.*). *Densmore* Compl. ¶¶ 77-87.

1 factual and legal issues will overlap. To prevent inconsistent and possibly conflicting rulings, it  
2 would be in the interest of judicial efficiency to have the same judge handle both. For the  
3 foregoing reasons, Plaintiffs respectfully request this Court relate *Densmore* and *Ventura*.

4  
5 Dated: May 17, 2010

**FINKELSTEIN THOMPSON LLP**

6 /s/ Tracy Tien

7 Tracy H. Tien

8 Rosemary M. Rivas

9 Mark Punzalan

10 100 Bush St., Suite 1450

11 San Francisco, California 94104

12 Telephone: (415) 398-8700

13 Facsimile: (415) 398-8704

14 Douglas G. Thompson

15 Mila F. Bartos

16 **FINKELSTEIN THOMPSON LLP**

17 The Duval Foundry

18 1050 30th Street, N.W.

19 Washington, DC 20007

20 Telephone: (202) 337-8000

21 Facsimile: (202) 337-8090

22 Counsel for Plaintiffs Todd Densmore and Antal

23 Herz