

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.,

Defendant.

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

1 This document also relates to:
2 JASON BAKER, SEAN BOSQUETT,
3 FRANK BACHMAN, PAUL GRAHAM , and
4 PAUL VANNATA, Individually and on
5 Behalf of All Others Similarly Situated,
6
7 Plaintiffs,
8
9 vs.
10
11 SONY COMPUTER ENTERTAINMENT
12 AMERICA, LLC successor to SONY
13 COMPUTER ENTERTAINMENT
14 AMERICA, INC.
15
16 Defendant.

Case No. 10-cv-1897 SC

The Honorable Samuel Conti

11 This document also relates to:
12 KEITH WRIGHT, on behalf of himself and all
13 others similarly situated,
14
15 Plaintiff(s),
16
17 v.
18
19 SONY COMPUTER ENTERTAINMENT
20 AMERICA INC.; and SONY COMPUTER
21 ENTERTAINMENT AMERICA, LLC.
22
23 Defendants.

Case No. 10-cv-1975 JL

The Honorable James Larson

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

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

25 On April 30, 2010, the case titled *Baker et al. v. Sony Computer Entertainment, LLC*
26 (“*Baker*”), CV 10-1897 was filed in the United States District Court for the Northern District of
27 California and assigned to the Honorable Samuel Conti.

1 On May 6, 2010, the case titled *Wright v. Sony Computer Entertainment America Inc. et*
2 *al.* (“*Wright*”) was filed in the United States District Court for the Northern District of California
3 and assigned to the Honorable James Larson.

4 Pursuant to Civil Local Rule 3-12, Plaintiffs Densmore and Herz (“Plaintiffs”) submit
5 this motion for the Court to consider whether the *Densmore*, *Baker*, and *Wright* actions should be
6 related to the action titled *Ventura v. Sony Computer Entertainment America Inc* (“*Ventura*”),
7 CV 10-1811 EMC. Copies of the *Densmore*, *Ventura*, *Baker*, and *Wright* complaints are
8 attached as Exhibits 1, 2, 3 and 4, respectively, to the accompanying Declaration of Tracy Tien.¹

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

19 All four cases allege that Sony sold PS3 gaming consoles that included an advertised
20 feature, the “Install Other OS” feature, which allowed users to install operating systems. *See*
21 *Densmore* Compl. ¶¶ 17-18; *Ventura* Compl. ¶¶ 13; *Baker* Compl. ¶ 16; *Wright* Compl. ¶ 10-11.
22 The “Install Other OS” feature allowed users to run web browsers and run programs and
23 essentially operate the PS3 like a computer. *Densmore* Compl. ¶¶17-21, 31-32; *Ventura* Compl.

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

1 ¶ 14-22; *Baker* Compl. ¶ 30; *Wright* Compl. ¶ 11-12. Sony advertised the “Install Other OS” as
2 being an important feature to the PS3. *Densmore* Compl. ¶¶ 19-24; *Ventura* Compl. ¶¶ 14-16;
3 *Baker* Compl. ¶ 26; *Wright* Compl. ¶ 10. On April 1, 2010, Sony released an update, Firmware
4 3.21. *Densmore* Compl. ¶ 27; *Ventura* Compl. ¶ 24; *Baker* Compl. ¶ 30; *Wright* Compl. ¶ 14.
5 Users are required to install Firmware 3.21 if they wish to maintain certain PS3 functions for
6 which they paid, such as the ability to play Blu-ray discs and play games online. *Densmore*
7 Compl. ¶¶ 26, 28-29; *Ventura* Compl. ¶ 26-29; *Baker* Compl. ¶ 30; *Wright* Compl. ¶ 15. Failure
8 to install Firmware 3.21, however, causes users to lose PS3 functionality. *Id.* If users do install
9 Firmware 3.21, they lose the “Install Other OS” feature, another paid-for and advertised PS3
10 function. *Densmore* Compl. ¶¶ 27-29; *Ventura* Compl. ¶ 23-24; *Baker* Compl. ¶ 29-30; *Wright*
11 Compl. ¶ 14.

12 All four cases are brought on behalf persons in the United States who purchased a PS3
13 from November 17, 2006 to March 27, 2010 and continued to own the PS3 on March 27, 2010.
14 *Densmore* Compl. ¶ 33; *Ventura* Compl. ¶ 32; *Baker* ¶ 33; *Wright* ¶ 16.

15 All four cases should be related because they name Sony Computer Entertainment
16 America Inc. and/or Sony Computer Entertainment LLC as defendant(s) and concern the same
17 property, transaction, and event, namely, the PS3 gaming console and Sony’s removal of the
18 “Install Other OS” feature via Firmware 3.21. Furthermore, all four cases state claims for breach
19 of contract, breach of the covenant of good faith and fair dealing, and violations of the
20 Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*) and California Unfair
21 Competition Law (Cal. Bus. and Prof. Code §§ 17200, *et seq.*). *Densmore* Compl. ¶¶ 41-51, 55-
22 68, 82-87; *Ventura* Compl. ¶¶ 35-71; *Baker* Compl. ¶ 36-66; *Wright* Compl. 19-42.²

23 It appears likely that there will be an unduly burdensome duplication of labor and
24 expense or the possibility of conflicting results if the cases are handled by different judges.
25

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

1 Since all four cases arise from the same practices by Sony and include similar allegations, the
2 factual and legal issues will overlap. To prevent inconsistent and possibly conflicting rulings, it
3 would be in the interest of judicial efficiency to have the same judge handle all four cases. For
4 the foregoing reasons, Plaintiffs respectfully request this Court relate *Densmore, Ventura, Baker,*
5 *Wright.*

6
7 Dated: May 17, 2010

Respectfully submitted,

8 **FINKELSTEIN THOMPSON LLP**

9 /s/ Tracy Tien

10 Tracy H. Tien

11 Rosemary M. Rivas
12 Mark Punzalan
13 100 Bush St., Suite 1450
14 San Francisco, California 94104
15 Telephone: (415) 398-8700
16 Facsimile: (415) 398-8704

17 Douglas G. Thompson
18 Mila F. Bartos
19 **FINKELSTEIN THOMPSON LLP**
20 The Duval Foundry
21 1050 30th Street, N.W.
22 Washington, DC 20007
23 Telephone: (202) 337-8000
24 Facsimile: (202) 337-8090

25 *Counsel for Plaintiffs Todd Densmore and Antal*
26 *Herz*