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7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

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

12 Plaintiff,

13 v.

14
 15 SONY COMPUTER ENTERTAINMENT
 AMERICA INC.,

16 Defendant.

Case No. 10-cv-01811-RS

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

The Honorable Richard Seeborg

17 **This document also relates to:**

18 JEFFREY HARPER and ZACHARY
 19 KUMMER, individually and on behalf of
 others similarly situated,

20 Plaintiffs,

21 v.

22
 23 SONY COMPUTER ENTERTAINMENT
 AMERICA, INC.,

24 Defendant.

Case No. 10-cv-02197-JL

The Honorable James Larson

25
 26 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

27 **PLEASE TAKE NOTICE** that on May 21, 2010, the case titled *Harper et al. v. Sony*

1 *Computer Entertainment America, Inc.* (“*Harper*”), 10-cv-02197-JL was filed in the United
2 States District Court for the Northern District of California and assigned to the Honorable James
3 Larson. On May 20, 2010, this Court ordered that the following cases filed in the United States
4 District Court for the Northern District of California be related to *Ventura v. Sony Computer*
5 *Entertainment America, Inc.*, (“*Ventura*”), 10-cv-01811-RS:

- 6 • *Densmore et al. v. Sony Computer Entertainment America, Inc.*, 10-cv-01945
- 7 • *Baker et al. v. Sony Computer Entertainment, LLC*, 10-cv-01897
- 8 • *Wright v. Sony Computer Entertainment America Inc. et al.*, 10-cv-01975

9 Pursuant to Civil Local Rule 3-12, Plaintiffs Harper and Kummer (“Plaintiffs”) submit
10 this motion for the Court to consider whether the *Harper* action should be related to the *Ventura*
11 action. A copy of the Harper Complaint is attached hereto as Exhibit A, to the accompanying
12 Declaration of Rose F. Luzon.

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

23 The Related Cases and the *Harper* action allege that Sony sold PS3 gaming consoles that
24 included an advertised feature, the “Install Other OS” feature, which allowed users to install
25 operating systems. See *Densmore* Compl. ¶¶ 17-18; *Ventura* Compl. ¶ 13; *Baker* Compl. ¶ 16;
26 *Wright* Compl. ¶ 10-11; *Harper* Compl. ¶¶ 29-31. The “Install Other OS” feature allowed users
27 to run web browsers and run programs and essentially operate the PS3 like a computer.

1 *Densmore* Compl. ¶¶17-21, 31-32; *Ventura* Compl. ¶¶ 14-22; *Baker* Compl. ¶ 30; *Wright* Compl.
2 ¶¶ 11-12; *Harper* Compl. ¶¶ 29-31. Sony advertised the “Install Other OS” as being an
3 important feature to the PS3. *Densmore* Compl. ¶¶ 19-24; *Ventura* Compl. ¶¶ 14-16; *Baker*
4 Compl. ¶ 26; *Wright* Compl. ¶ 10; *Harper* Compl. ¶¶ 29-31. On April 1, 2010, Sony released an
5 update, Firmware 3.21. *Densmore* Compl. ¶ 27; *Ventura* Compl. ¶ 24; *Baker* Compl. ¶ 30;
6 *Wright* Compl. ¶ 14; *Harper* Compl. ¶ 41. Users are required to install Firmware 3.21 if they
7 wish to maintain certain PS3 functions for which they paid, such as the ability to play Blu-ray
8 discs and play games online. *Densmore* Compl. ¶¶ 26, 28-29; *Ventura* Compl. ¶ 26-29; *Baker*
9 Compl. ¶ 30; *Wright* Compl. ¶ 15; *Harper* Compl. ¶¶ 41-42. Failure to install Firmware 3.21,
10 however, causes users to lose PS3 functionality. *Id.* If users do install Firmware 3.21, they lose
11 the “Install Other OS” feature, another paid-for and advertised PS3 function. *Densmore* Compl.
12 ¶¶ 27-29; *Ventura* Compl. ¶¶ 23-24; *Baker* Compl. ¶¶ 29-30; *Wright* Compl. ¶ 14; *Harper*
13 Compl. ¶ 41.

14 The Related Cases and the *Harper* action are brought on behalf persons in the United
15 States who purchased a PS3 from November 17, 2006 to March 27, 2010 and continued to own
16 the PS3 on March 27, 2010. *Densmore* Compl. ¶ 33; *Ventura* Compl. ¶ 32; *Baker* ¶ 33; *Wright* ¶
17 16; *Harper* Compl. ¶ 45.

18 The *Harper* action should be related because it names Sony Computer Entertainment
19 America Inc. as a defendant and concerns the same property, transaction, and event, namely, the
20 PS3 gaming console and Sony’s removal of the “Install Other OS” feature via Firmware 3.21.
21 Furthermore, the *Harper* action states claims for breach of contract, breach of the covenant of
22 good faith and fair dealing, and violations of the Consumers Legal Remedies Act (Cal. Civ. Code
23 §§ 1750, *et seq.*) and California Unfair Competition Law (Cal. Bus. and Prof. Code §§ 17200, *et*
24 *seq.*). *Harper* Compl. ¶¶ 54-69, 76-81.¹

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

27
28 ¹*Harper, Ventura, Densmore, and Wright* also assert a claim for unjust enrichment.

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

6 Dated: May 27, 2010

Respectfully submitted,

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9 By: 

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