

EXHIBIT N

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 RICK BENAVIDES, on behalf of himself
11 and all others similarly situated,

12 Plaintiff,

13 vs.

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

17 Defendants.
18
19

Case No.

CV 10 - 261 EMC

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

20 INTRODUCTION

21 1. Plaintiff Rick Benavides ("Plaintiff"), on behalf of himself and all those similarly
22 situated, hereby complains and alleges against defendant Sony Computer Entertainment
23 America, Inc. ("Sony CEA") and defendant Sony Computer Entertainment America, LLC (Sony
24 CEA LLC") (collectively, "Sony"), upon information and belief as to all allegations except
25 those allegations pertaining to Plaintiff personally.

26 2. This action is brought as a nationwide class action pursuant to Rule 23 of the
27 Federal Rules of Civil Procedure, on behalf of a nationwide class of persons who owned one of
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1 the non-“Slim” models of the Sony CEA PlayStation ®3 video-game console (collectively,
2 “PS3”) during the period of November 17, 2006 to March 27, 2010 and who did not sell their
3 PS3 before March 27, 2010 (the “Class members”). As more fully set forth herein, this action
4 seeks damages, restitution, injunctive relief, attorneys’ fees and costs of this suit for Plaintiff and
5 each Class member.

6 3. When Sony launched the PS3 amid great fanfare on November 17, 2006, it touted
7 the PS3 as having additional non-gaming features and capabilities, such as the “Other OS
8 Function,” high-definition Blu-ray technology, its unified online gaming service, The
9 PlayStation Network, and other multimedia capabilities, which set PS3 apart from its
10 competitors. One of the main selling features of the PS3 was the Other OS Function; the ability
11 to install another operating system, such as the Linux operating system, in addition to the
12 primary PS3 system software. Now, Sony has intentionally disabled the Other OS Function and
13 other valuable Additional Advertised Features of the PS3.

14 4. Sony’s intentional disablement of these features constitutes a breach of the sales
15 contract between Sony and its PS3 purchasers, an unfair and deceptive business practice under
16 California law, a breach of the covenant of good faith and fair dealing, and violates the
17 California Consumer Legal Remedies Act.

18 PARTIES & CAPACITIES

19 5. Plaintiff Rick Benavides is, and at all times was, a resident of the State of
20 California, and the County of San Diego. Plaintiff purchased a PS3 from Game Stop in San
21 Diego on or about February 2008 for \$399.99 plus tax.

22 6. Defendant Sony CEA is, and at all material times was, a corporation incorporated
23 under the laws of the State of Delaware, with its principal place of business located in Foster
24 City, California.

25 7. Defendant Sony CEA LLC is the successor-in-interest to Sony CEA. Sony CEA
26 LLC is incorporated in the State of Delaware, with its principal place of business located in
27 Foster City, California.

1 • Sony Computer Entertainment President Ken Kutaragi, June 2006: “Speaking
2 about the PS3, we never said we will release a game console. It is radically different from the
3 previous PlayStation. It is clearly a computer.”

4 <http://www.edge-online.com/news/kutaragi-details-ps3-computer-claim>

5 • Phil Harrison, President of Sony Entertainment Worldwide Studios 2005-2008,
6 May 2006: “We believe that the PS3 will be the place where our users play games, watch films,
7 browse the Web, and use other computer functions. The PlayStation 3 is a computer. We do not
8 need the PC.”

9 http://www.gamasutra.com/view/news/9547/Harrison_We_Do_Not_Need_The_PC.php

10 • Izumi Kawanishi, head of Sony’s Network System Development Section, May
11 2006: “Because we have plans for having Linux on board (the PS3), we also recognize Linux
12 programming activities...Other than game studios tied to official developer licenses, we’d like to
13 see various individuals participate in content creation for the PS3.”

14 http://www.gamasutra.com/php-bin/news_index.php?story=9290

15 • Phil Harrison, February 2007: “One of the most powerful things about the PS3 is
16 the ‘Install Other OS’ option.”

17 <http://kotaku.com235049/20-questions-with-phil-harrison-at-dice>

18 • Sony Computer Entertainment Inc., PS3 Open Platform, 2006-2010: “In addition
19 to playing games, watching movies, listening to music, and viewing photos, you can use the
20 PS3™ system to run the Linux operating system. By installing the Linux operating system, you
21 can use the PS3™ system not only as an entry-level personal computer with hundreds of familiar
22 applications for home and office use, but also as a complete development environment for the
23 Cell Broadband Engine™ (Cell/B.E.).”

24 <http://www.playstation.com/ps3-openplatform/index.html>

25 • Sony Computer Entertainment Inc., PS3 Knowledge Center, 2006-2010: “The
26 PlayStation 3 provides an option for third-party system software to be installed on the PS3™
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1 system instead of the system software provided by Sony Computer Entertainment Inc. Such
2 third-party system software is referred to as an ‘Other OS.’”

3 http://manuals.playstation.com/support/answer/index.htm?a_id=469

4 **B. The Other OS Function is an Extremely Valuable Feature for PS3 users**

5 15. Plaintiff, in fact, chose to purchase Sony’s PS3, as opposed to Microsoft’s Xbox
6 or Nintendo’s Wii, because of the PS3s unique Other OS Function and valuable Additional
7 Advertised Features. The Other OS Function gives Plaintiff the opportunity to use his PS3 as a
8 computer, including browsing the internet, using the Blu-ray data drive, and playing Linux-
9 specific games. When running the Linux software system, the PS3 serves as a fully functional
10 home computer, loaded with more than 1,000 applications.

11 16. As Kai Staats, CEO of Terra Soft, a third-party that developed Linux applications
12 for the PS3, stated, “[t]he PlayStation 3 places a supercomputer in the home...Yellow Dog Linux
13 provides a complete Linux OS for the PlayStation 3 resulting in a very powerful computing
14 platform. We are thrilled to be working with RapidMind to make this platform more accessible
15 for professional developers and hobbyists alike ...With our operating system, the PlayStation
16 could very easily be your home CD player, DVD player, MP3 player and home computer, as
17 well as a great game box...This is not an application-limited alliance. This is a full-blown
18 computer. There is no issue of ‘can we do that? It can do everything.’”

19 17. Perhaps most importantly, the PS3’s Other OS Function having the ability to run
20 the Linux operating system saves consumers money because they do not need to purchase many
21 additional electronic devices or applications they would otherwise need to buy if Sony did not
22 offer the Other OS Function.

23 **C. Sony Reneged on Its Promise to Support PS3’s Other OS Function**

24 18. Sony had made numerous representations to PS3 owners that it would continue to
25 support the Other OS Function including the following:

26 • Geoffrey Levand, Principal Software Engineer at Sony Corporation, August 2009:
27 “Please be assured that SCE (Sony Computer Entertainment) is *committed to continue the*

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1 **support** for previously sold models that have the “Install Other OS” feature and that **this feature**
2 **will not be disabled** in future firmware releases.” Notice distributed, via mailing list, to PS3
3 customers using Linux operating system.

4 • John Koller, Sony’s Director of Hardware Marketing, stated in an August 2009
5 interview with artstechnica.com, “[i]f anyone wants to use the previous models and change the
6 OS, they can do so” **reiterating Sony’s commitment to supporting the Other OS Function in**
7 **existing PS3 models.**

8 19. However, Contrary to Sony’s promises that it would continue to support the Other
9 OS Function, Sony announced on March 28, 2010 it would no longer honor its obligation to
10 support the Other OS Function. Sony announced on its website, www.playstation.com, it was
11 about to release the following firmware Update 3.21:

12 The next system software update for the PlayStation 3 [PS3] system will be
13 released on April 1, 2010 (JST), and will disable the ‘Install Other OS’ feature
14 that was available on the PS3 systems prior to the current slimmer models,
15 launched in September 2009. This feature enabled users to install an operating
16 system, but due to *security concerns* (emphasis added), Sony Computer
17 Entertainment will remove the functionality through the 3.21 system software
18 update.

19 In addition, disabling the “Other OS” feature will help ensure that PS3 owners
20 will continue to have access to the broad range of gaming and entertainment
21 content from SCE and its content partners on a more secure system.

22 Consumers and organizations that currently use the “Other OS” feature can
23 choose not to upgrade their PS3 systems, although the following features will no
24 longer be available:

25 Ability to sign in to PlayStation Network and use network features that require
26 signing in to PlayStation Network, such as online features of PS3 games and chat;

27 Playback of PS3 software titles or Blu-ray Disc videos that require PS3 system
28 software version 3.21 or later;

Playback of copyright-protected videos that are stored on a media server (when
DTCP-IP is enabled under Settings);

Use of new features and improvements that are available on PS3 system software
3.21 or later.

20. Other than the foregoing announcement on Sony’s website, Sony did not provide

1 any notice to Plaintiff and other Class members that it would disable the Additional Advertised
2 Features unless they installed Update 3.21. Accordingly, a substantial number of PS3 users
3 were unaware that Sony had unilaterally disabled the Additional Advertised Features until they
4 attempted to use those functions on or after April 1, 2010.

5 21. On information and belief, contrary to Sony's assertion, the "security concerns"
6 did not involve a threat to PS3 users. Rather, it reflected Sony's concerns that the Other OS
7 Function might be used by "hackers" to copy and/or steal gaming and other content. In fact, the
8 release of Update 3.21 came immediately following an announcement by a hobbyist named
9 "Geohot" claiming he had found a way to exert more control over the PS3 hardware than Sony
10 intended.

11 22. In addition, Sony's new "Slim"PS3 does not include the Other OS Function, and
12 because it no longer sells the "fat" PS3, Sony has no financial incentive to support the Other OS
13 feature. Plainly spoken, Sony's decision to force its PS3 users to disable the Other OS Function
14 was made purely in its own self interest, and at the expense of Plaintiff and other Class members.

15 **D. Sony Forces Plaintiff and Class Members to Choose Between the Other OS Function**
16 **and Valuable Additional Advertised Features**

17 23. Sony prevented PS3 users from accessing a vast array of previously accessible
18 features if they declined to "upgrade." In particular, for users who do not install firmware 3.21:

- 19 • Impossible to access the PlayStation Network;
- 20 • Impossible to play PS3 games online;
- 21 • Impossible to play new PS3 games;
- 22 • Impossible to watch Blu-ray videos;
- 23 • Disablement of Blu-ray drive entirely if they contain an AACS Host
24 Revocation List that affects the old software version; and
- 25 • Disablement of DTCP-IP media servers.

26 24. Plaintiff has installed Update 3.21 in order to retain access to the valuable
27 Additional Advertised Features, and consequently has lost permanent access to the Other OS
28 Function, which Plaintiff had intended to use extensively in the future. Sony has forced Plaintiff

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members ability to use the PS3 functionalities for which they had paid substantial sums;

- ii. whether Sony violated the covenant of good faith and fair dealing applicable to all contracts;
- iii. whether Sony unjustly enriched itself by retaining the entire sales price for the PS3 despite having disabled valuable functions for which Plaintiff and the other Class members initially paid;
- iv. whether Sony violated California's Unfair Competition Law by restricting the PS3's functionalities thus forcing Plaintiff and the other Class members between the Other OS function and the Other Advertised Features initiated by firmware Update 3.21, and failing to inform purchasers they may be forced to choose between the Other OS function and the Other Advertised Features disabled by firmware Update 3.21;
- v. whether Sony violated California's Consumer Legal Remedies Act by representing that the PS3 would have features that it thereafter removed and/or by inserting unconscionable terms into a contract; and
- vi. whether Plaintiff and other Class members have sustained damages and/or other compensable losses and, if so, the proper measure thereof;

(c) The claims asserted by Plaintiff are typical of the claims of the members of the Class;

(d) Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained attorneys experienced in class action and complex litigation, including class action litigation involving contracts and state statutes protecting consumers from unfair and deceptive acts;

(e) A class action is superior to other available methods for the fair and efficient adjudication of the controversy , for the following reasons:

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- i. Absent a class action, Class members as a practical matter will be unable to obtain redress, Sony's violations of its legal obligations will continue without remedy, and Sony will continue to retain its ill-gotten gains;
 - ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;
 - iii. When the liability of Sony has been adjudicated, the Court will be able to determine the claims of all members of the Class;
 - iv. A class action will permit an orderly and expeditious administration of class claims, foster economies of time, effort, and expense and ensure uniformity of decisions; and
 - v. The lawsuit presents no difficulties that would impede its management by the Court as a class action;
- (f) Sony acted on grounds generally applicable to Class members, making class-wide relief appropriate; and
- (g) The prosecution of separate actions by individual members of the Class would create a risk of incompatible standards of conduct for Sony and of inconsistent or varying adjudications for all parties.

FIRST CAUSE OF ACTION
(Breach of Contract)

29. Plaintiff incorporates by reference all the allegations in the prior paragraphs as if fully set forth herein.

30. Plaintiff and the other Class members purchased PS3 systems from Sony with the reasonable expectation that Sony would fulfill its obligation to provide and support the Other OS Function, as well as the Additional Advertised Features, throughout the life of the product.

31. Plaintiff and the other Class members have fulfilled their obligations

1 under the sales contract by paying the PS3 asking price.

2 32. Despite Plaintiff and other Class members fully performing their obligation by
3 paying the asking price for the product, Sony reneged on its promise to provide and support the
4 Other OS function by issuing firmware Update 3.21, forcing purchasers to disable the Other OS
5 Function, or lose valuable Additional Advertised Features, for which they had paid.

6 33. By forcing Plaintiff and other Class members to either install firmware Update
7 3.21, thereby permanently disabling the Other OS Function, or give up the use of valuable
8 Additional Advertised Features, Sony has materially breached its contract with Plaintiff and
9 other Class members who have suffered harm, and continue to suffer harm, and cannot obtain the
10 benefit of their bargain with Sony,
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12 **SECOND CAUSE OF ACTION**
13 **(Violation of the False Advertising Law-Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

14 34. Plaintiff incorporates by reference all the allegations in the prior paragraphs as if
15 fully set forth herein.

16 35. The conduct and actions of Sony complained of herein constitute false
17 Advertising in violation of the False Advertising Law (“FAL”) California Business and
18 Professions Code §§17500, *et seq.*

19 36. Among other things, Sony made material misrepresentations and failed to disclose
20 or adequately disclose material information regarding the Other OS Function, the PS3, and
21 Sony’s right to disable this feature, which Sony knew, or should have known, were likely to
22 cause reasonable consumers to buy PS3s in reliance upon said representation. Sony intended for
23 Plaintiff and Class members to rely on these representations, and Plaintiff and Class members
24 did rely on Sony’s representations.
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26 37. Sony committed such violations of the FAL with actual knowledge or knowledge
27 fairly implied on the basis of objective circumstances.
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2 **FOURTH CAUSE OF ACTION**
3 **(Breach of the Covenant of Good Faith and Fair Dealing)**

4 44. Plaintiff incorporates by reference all the allegations in the prior paragraphs as if
5 fully set forth herein.

6 45. Plaintiff and the other Class members purchased their PS3s with the reasonable
7 expectation that they would be able to use the Other OS Function as well as all Additional
8 Advertised Features during their entire time of ownership of the PS3 systems.

9 46. By forcing purchasers to either install firmware Update 3.21, or forego
10 the use of Additional Advertised Features, Sony knew that it was materially depriving Plaintiff
11 and other Class members of the valuable PS3 capabilities for which they had contracted.
12 Consequently, Plaintiff and other Class members did not obtain the benefit of their bargain with
13 Sony.

14 47. As a direct and proximate result of Sony's deceptive actions, as described herein,
15 Plaintiff and other Class members suffered, and continue to suffer, ascertainable financial losses.

16 **FIFTH CAUSE OF ACTION**
17 **(Unjust Enrichment)**

18 48. Plaintiff incorporates by reference all the allegations in the prior paragraphs as if
19 fully set forth herein.

20 49. Plaintiff and other Class members conferred substantial benefit upon
21 Sony by paying the purchase price for their PS3 systems, which included the Other OS Function,
22 as well as the Additional Advertised Features.

23 50. Sony knowingly and willingly accepted full purchase price from
24 Plaintiff and the other Class members but only delivered partial value of the PS3 system. Sony
25 did not honor its contractual obligation to provide and support both the Other OS Function, and
26 the Additional Advertised Features, Instead, Sony forced purchasers to give up either the Other
27 OS Function, or the Additional Advertised Features, while retaining full monetary benefit.

28 51. For the foregoing reasons, it is inequitable for Sony to retain full monetary benefit

1 at the expense of Plaintiff and the other Class members. Based on its conduct, Sony has been
2 unjustly enriched and are required, in equity and in good conscience, to compensate Plaintiff and
3 the other Class members for harm suffered as a result of its actions.

4 52. As a direct and proximate result of Sony's unjust enrichment, Plaintiff and the
5 other Class members have suffered injury and are entitled to reimbursement, restitution, and
6 disgorgement of benefits conferred upon Sony by Plaintiff and the other Class members.

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8 **SIXTH CAUSE OF ACTION**
9 **(California's Consumer Legal Remedies Act)**

10 53. Plaintiff incorporates by reference all the allegations in the prior paragraphs as if
11 fully set forth herein.

12 54. Sony violated California's Consumer Legal Remedies Act by
13 representing that PS3 supported features and functions which it did not, in violation of Civil
14 Code section 1770(5). Sony represented that PS3 supported the Other OS Function, as well as
15 the Additional Advertised Features, while omitting the fact that Plaintiff and other Class
16 members would be deprived, after purchase, of either the Other OS Function or the Additional
17 Advertised Features. Accordingly, Plaintiff and other Class members seek injunctive relief
18 against Sony.

19 55. Sony also violated Civil Code section 1770(19) by including the
20 following unconscionable provisions in its System Software License Agreement:

21 (1) "Some services may change your current settings, cause a loss of data or content, or cause
22 some loss of functionality."

23 (2) "SCE, at its sole discretion, may modify the terms of this agreement at any time, including
24 any terms in the PS3™ system documentation or manual, or at [http://www.scei.co.jp.ps3-
license/index.html](http://www.scei.co.jp.ps3-
25 license/index.html). Please check back on this website from time to time for changes to this
agreement. Your continued access to or use of the system will signify your acceptance of any
changes to this Agreement."

26 56. Sony imposed the foregoing unconscionable provisions upon Plaintiff and the
27 other Class members by virtue of its superior bargaining power, thereby stripping Plaintiff and
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1 the other Class members of any meaningful choice whether to accept or reject these
2 provisions. Thus, the System Software License Agreement is oppressive, one-sided and not the
3 product of negotiation, nor any meaningful choice.

4 57. Plaintiff and the other Class members had no ability to negotiate the
5 terms of Sony's System Software License Agreement, which was provided to them only after
6 they purchased their PS3s, which include the terms that permit Sony to remove functions at will,
7 and unilaterally change the System Software License Agreement at will, thereby forcing
8 purchasers to either accept any changes in the System Software License Agreement, or cease
9 their use of their PS3s.

10 58. Moreover, Sony obscured these provisions deep within its small-type,
11 prolix form, disguised them under indistinct headings, and hid them among various unrelated
12 contractual terminology.

13 59. These provisions are both procedurally and substantively unconscionable. By
14 imposing these terms, Sony has created an unlimited ability for itself to alter the System Software
15 License Agreement any way it sees fit, eliminating valuable PS3 functions to the disadvantage of
16 Plaintiff and other Class members.

17 60. These provisions, which are completely biased in Sony's favor at the expense of
18 Plaintiff and other Class members, are hidden deep within its contract form and not even
19 available to purchasers of PS3 until after the sale was made. Therefore, Plaintiff and other Class
20 members were denied any meaningful choice whether to accept or reject those terms. Sony's
21 deceptive conduct affords them a distinctly unfair advantage over purchasers of PS3.

22 61. Additionally, provisions of the System Software License Agreement are
23 substantively unconscionable because they give Sony the ability to unilaterally reallocate risk
24 between themselves and purchasers of PS3, in an objectively unreasonable and unexpected
25 manner. Sony permits itself to change the terms of to protect its interests in complete derogation
26 of the rights of Plaintiff and other Class members.

27 62. Therefore, both procedurally and substantively, these provisions of the System
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1 Software License Agreement are unconscionable and unduly oppressive.

2 63. Accordingly, should Sony assert a defense in this action related to these
3 provisions, Plaintiff and other Class members seek injunctive relief requiring Sony to cease
4 enforcement of the foregoing unconscionable contract provisions.

5 WHEREFORE, Plaintiff requests that the Court enter judgment against Sony as follows:

6
7 A. Certifying this action as a class action, pursuant to Rule 23(a) and 23(b)(3) of the
8 Federal Rules of Civil Procedure, with a class as defined above;

9 B. On Plaintiff's First Cause of Action, awarding Plaintiff and other Class members
10 all appropriate remedies, including but not limited to damages as well as consequential and
11 incidental damages;

12 C. On Plaintiff's Second Cause of Action, awarding Plaintiff and other Class
13 members all appropriate remedies, including but not limited to restitution of all or part of the
14 money Plaintiff and other Class members paid for the purchase of PS3s during the class period;

15 D. On Plaintiff's Third Cause of Action awarding Plaintiff and other Class members
16 all appropriate remedies, including but not limited to restitution and disgorgement of all profits
17 unjustly retained by Sony;

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19 E. On Plaintiff's Fourth Cause of Action awarding Plaintiff and other Class members
20 all appropriate remedies, including but not limited to restitution and disgorgement of all profits
21 unjustly retained by Sony;

22 F. On Plaintiff's Fourth Cause of Action awarding Plaintiff and other Class members
23 all appropriate remedies, including but not limited to restitution and disgorgement of all profits
24 unjustly retained by Sony;

25 G. On Plaintiff's Sixth Cause of Action awarding Plaintiff and other Class members
26 injunctive relief only;

27 H. Awarding Plaintiff's and other Class members' interest, costs and attorneys' fees;

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1 and;

2 I. Awarding Plaintiff and other Class members such other and further relief as this
3 Court deems just and proper.

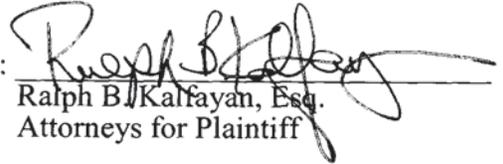
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KRAUSE KALFAYAN, BENINK,
& SLAVENS, LLP

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7 Date: 6/10/10

By: 
Ralph B. Kalfayan, Esq.
Attorneys for Plaintiff

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DEMAND FOR TRIAL BY JURY

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Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a
16 trial by jury.

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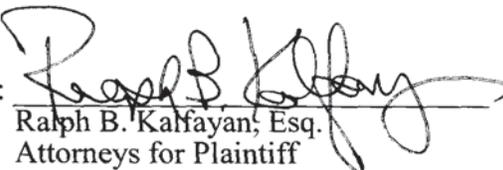
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KRAUSE KALFAYAN, BENINK,
& SLAVENS, LLP

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21 Date: 6/10/10

By: 
Ralph B. Kalfayan, Esq.
Attorneys for Plaintiff

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