

1 Charles S. Bishop, CSB No. 99335
 cbishop@connbish.com
 2 Connor & Bishop
 44 Montgomery Street, Suite 1750
 3 San Francisco, CA 94104
 Telephone 415.434.3006
 4 Facsimile 415.434.1445

5 Attorney for Plaintiffs

6
 7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

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

14 Plaintiffs,

15 vs.

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

19 Defendant.

11 **CASE NO.** _____

12 **COMPLAINT**

13 **CLASS ACTION**

14 **DEMAND FOR JURY TRIAL**

20 Plaintiffs bring this class action complaint and allege as follows:

21 **NATURE OF ACTION**

22 1. SONY COMPUTER ENTERTAINMENT AMERICA, LLC successor to SONY
 23 COMPUTER ENTERTAINMENT AMERICA, INC. ("Sony") marketed and sold its PlayStation3
 24 video game console ("PS3") as including valuable functions, such as the "Other OS" feature, unified
 25 online gaming service, PlayStation Network, multimedia capabilities, and Blu-ray technology. The
 26 PS3 could run a Linux operating system that transforms the PS3 into a home computer. Because of
 27
 28

COMPLAINT CLASS ACTION; DEMAND FOR JURY TRIAL

1 such exceptional features, the PS3 was the most expensive gaming console on the market when
2 launched in 2006.

3 2. Sony has now intentionally disabled valuable functions of the PS3 for which
4 consumers paid a premium price over other gaming consoles. This retroactive crippling PS3
5 functionality breaches the contract between Sony and its PS3 customers, breaches the covenant of
6 good faith and fair dealing, and violates the California Consumers Legal Remedies Act and Unfair
7 Competition Law.

8 3. Plaintiffs seek to represent a class of all persons in the United States who purchased
9 a PS3 during the period beginning November 17, 2006 through March 27, 2010, and still owned their
10 PS3 as of March 27, 2010 (“Class”). Plaintiffs seek to recover for themselves and each Class
11 member compensatory damages, restitution, injunctive relief, attorneys’ fees, and the costs of this
12 suit.

13 PARTIES

14 4. Plaintiff JASON BAKER is a resident of the State of North Dakota. Mr. Baker
15 purchased a PS3 on or about March 15 or 16, 2007 for \$599.99 plus tax.

16 5. Plaintiff SEAN BOSQUETT is a resident of the State of Florida. Mr. Bosquett
17 purchased a PS3 on or about September 6, 2008 for \$426.93 including tax.

18 6. Plaintiff FRANK BACHMAN is a resident of the State of South Carolina. Mr.
19 Bachman purchased a PS3 on or about January 1, 2009 for \$385.19 including tax.

20 7. Plaintiff PAUL GRAHAM is a resident of the State of Michigan. Mr. Graham
21 purchased a PS3 during the class period.

22 8. Plaintiff PAUL VANNATTA is a resident of the State of Wisconsin. Mr. VanNatta
23 purchased a PS3 on or about July 13, 2008 for \$422.39 including tax.

24 9. Defendant Sony develops, markets, and sells PlayStation gaming consoles, including
25 the “fat” PS3 at issue in this litigation. Defendant is a Delaware company headquartered in Foster
26 City, California.

27 JURISDICTION AND VENUE

28 10. This court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(d), as at least

COMPLAINT CLASS ACTION; DEMAND FOR JURY TRIAL

1 one Class member is of diverse citizenship from Sony, there are more than 100 members of the
2 proposed Class, and the amount in controversy exceeds \$5 million.

3 11. Venue is proper in this district under 28 U.S.C. §1391(b)(2), as a substantial part of
4 the acts, events or omissions giving rise to Plaintiffs' claims occurred in the Northern District of
5 California.

6 12. Venue is also proper in this district under 28 U.S.C. §1391(c) because Sony's
7 corporate headquarters and principal place of business is in the Northern District of California.

8 **INTRADISTRICT ASSIGNMENT**

9 13. Pursuant to Local Rules 3-2(c) and 3-5(b), this action should be assigned to the San
10 Francisco Division of the Northern District because Sony resides in San Mateo County and a
11 substantial part of the acts, events, or omissions giving rise to Plaintiffs' claims occurred in San
12 Mateo County.

13 **FACTUAL ALLEGATIONS**

14 14. Defendant was founded in 1994 as the North American division of Sony Computer
15 Entertainment, Inc., and according to its website, is responsible for the "continued growth of the
16 PlayStation® market in the United States and Canada."

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

20 16. The "fat" PS3 was manufactured, marketed and sold as having the following features:

21 "In addition to playing games, watching movies, listening to music,
22 and viewing photos, you can use the PS3™ system to run the Linux
23 operating system. By installing the Linux operating system, you can
24 use the PS3™ system not only as an entry-level personal computer
with hundreds of familiar applications for home and office use, but
also as a complete development environment for the Cell Broadband
Engine™ (Cell/B.E.)."

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

26 17. Sony said:

27 "By installing the Linux operating system, you can use the PS3™
28 system not only as an entry-level personal computer with hundreds of
familiar applications for home and office use, but also as a complete
development environment for the Cell Broadband Engine™

1 (Cell/B.E.).”

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

3 18. Sony’s PS3 Manual, 2006-2010, provides:

4 "Install other system software on the hard disk. For information on
5 types of compatible system software and obtaining the installer, visit
Open Platform for PlayStation3."

6 <http://manuals.playstation.net/document/de/ps3/current/settings/osinstall.html>

7 19. In February 2007, Phil Harrison of Sony said:

8 ***"One of the most powerful things about the PS3 is the 'Install
9 Other OS' option."***

10 <http://kotaku.com/235049/20-questions-with-phil-harrison-at-dice>

11 20. Sony’s PS3 Linux Distributor's Starter Kit, 2006-2009, provides:

12 "The Linux Distributor's Starter Kit provides information, binary and source
13 codes to Linux Distribution developers who wants to make their distro
support PS3."

14 <http://www.kernel.org/pub/linux>

15 21. In May 2006, Izumi Kawanishi of Sony said:

16 "Because we have plans for having Linux on board [the PS3], we also
17 recognize Linux programming activities... Other than game studios
tied to official developer licenses, we'd like to see various individuals
participate in content creation for the PS3."

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

19 22. In August 2009, Geoffrey Levand of Sony said:

20 "Please be assured that SCE is committed to continue the support for
21 previously sold models that have the "Install Other OS" feature and
that this feature will not be disabled in future firmware releases."

22 Mailing list to PS3 customers using Linux.

23 23. In May 2006, Phil Harrison of Sony said:

24 ***"The Playstation 3 is a computer. We do not need the PC."***

25 <http://www.spiegel.de/netzwelt/web/0,1518,418642,00.html>

26 24. Sony’s own manual says:

27 "It was fully intended that you, a PS3 owner, could play games, watch
28 movies, view photos, listen to music, and run a full-featured Linux
operating system that transforms your PS3 into a home computer.”

1 <http://www.gamespot.com/news/6162316.html?tag=result;title;0>

2 25. As detailed above, Sony engaged in a long term advertising campaign in which it
3 uniformly and repeatedly represented that the PS3 has the ability to install "Other OS" (operating
4 systems such as Linux) and can operate as a computer. While the "fat" PS3 does not include Linux
5 pre-installed, Sony included an option in the XMB menu to install other operating systems such as
6 Linux.

7 <http://manuals.playstation.net/document/en/ps3/current/settings/osinstall.html>

8
9 26. Sony's own manual says:

10 "It was fully intended that you, a PS3 owner, could play games, watch
11 movies, view photos, listen to music, and run a full-featured Linux
operating system that transforms your PS3 into a home computer."

12 <http://www.gamespot.com/news/6162316.html?tag=result;title;0>

13 27. Sony sold the "fat" PS3 with the intention that reasonable consumers would rely on
14 their material representations about PS3 functions and features. It should come as no shock that
15 Plaintiffs and the Class actually relied upon their representations and purchased a "fat" PS3
16 expecting those features. Plaintiffs and the Class actually relied upon Sony's representations and
17 purchased a "fat" PS3 expecting those features, and would not have purchased a PS3 at the price paid
18 without those features.

19 28. Sony recently affirmed it's continued commitment to support the full features on the
20 "fat" original PS3 units via mailing list posts:

21
22 " The feature of "Install Other OS" was removed from the new "Slim"
23 PS3 model to focus on delivering games and other entertainment
24 content. Please be assured that SCE is committed to continue the
25 support for previously sold models that have the "Install Other OS"
26 feature and that this feature will not be disabled in future firmware
27 releases. Although it's disappointing that Sony have removed the
28 feature from new models, It's good to have this public assurance from
Sony that at least the feature won't be removed from older models
which are already working. Please understand that in my position as
PS3-Linux maintainer I can really only provide users with technical
support for Linux and the LV1 hcall interface. The text above was
provided to me by SCE management. If you have any questions
regarding it or any other feature of the PS3 please contact the
Playstation Customer Support in your country. Using Playstation

1 Customer Support will insure your inquiry is processed through the
2 correct channels within SCE. -Geoff”

3 <http://lists.ozlabs.org/pipermail/cbe-oss-dev/2010-February/007202.html>

4 29. Less than one month later, Sony reversed its position by announcing that the "Other
5 OS" capability of the original model PS3s would be removed with PS3 Firmware 3.21 on April 1,
6 2010.

7 <http://blog.eu.playstation.com/2010/03/29/ps3-firmware-3-21-coming-april-1st/>

8 30. On April 1, 2010, Sony released Firmware update 3.21 for the PS3, which mandates:

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

16 In addition, disabling the “Other OS” feature will help ensure that
17 PS3 owners will continue to have access to the broad range of gaming
18 and entertainment content from SCE and its content partners on a
19 more secure system. Consumers and organizations that currently use
20 the “Other OS” feature can choose not to upgrade their PS3 systems,
21 although the following features will no longer be available:

- 22 1. Ability to sign in to PlayStation Network and use network
23 features that require signing in to PlayStation Network, such
24 as online features of PS3 games and chat.
- 25 2. Playback of PS3 software titles or Blu-ray Disc videos that
26 require PS3 system software version 3.21 or later.
- 27 3. Playback of copyright-protected videos that are stored on a
28 media server (when DTCP-IP is enabled under Settings).
- 29 4. Use of new features and improvements that are available on PS3
30 system software 3.21 or later.”

31 <http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-43/#comments>

EXAMPLES OF CONSUMER FRUSTRATION

32 31. In essence, Plaintiffs are given a Hobson’s choice in which they either irrevocably
33 lock out the other operating system/home computer feature of their “fat” PS3, or keep their other
34 operating system/home computer functionality and lose the ability to play new games, upcoming

1 Blu-rays, and access PlayStation Network games. Either choice results in Sony taking something
 2 Plaintiffs purchased, in which they have a vested interest, and diminishes the value of their “fat” PS3
 3 system.

4 32. The fact that consumers reasonably expected to have and retain full PS3 functionality
 5 after purchase is reflected in the following owner complaints:

6 I bought a PlayStation 3 for \$600 US Dollars on November 17, 2006 advertised as
 7 a Computer Entertainment System with a feature that allowed consumers to install
 8 Linux as an operating system. This feature was called Other OS from system menu
 9 which allowed users to use the machine not just as a console but also as a computer.
 10 On April 1, 2010 Sony updated the console's firmware and removed this feature and
 no longer can the console be used as a computer. The console which I bought for 600
 US dollars has now the same features as the newer cheaper low end models. . . I am
 seeking a new firmware which will put back the promised feature that was once
 advertised as being part of the product or a refund.

11 <http://forums.gametrailers.com/thread/why-are-people-so-pissed-about/1045716?page=4>

12 I'll start by saying I have been a loyal sony customer and have bought all their
 13 systems at launch since the ps1. they have done a few dirty things but it wasn't until
 14 today until my eyes finally opened to see what an evil company full of liars sony
 15 really is. I mean this isn't the first time sony has lied to us, but to me this is the same
 16 as theivery. I bought a ps3, waited a week in freezing rain and paid 600 dollars for
 17 it under the impression I would have a system that could use linux, I've spent
 18 YEARS learning and playing with linux on my ps3, and 3 years later sony steals it
 19 back. A FEATURE THAT THEY ADVERTISED. I feel like I've been stabbed in the
 back by my best friend. I was the one who was defending the ps3 from all the haters
 during its first couple years when it had pretty much no games. I hope sony realizes
 they have pulled a benedict arnold and have betrayed the most loyal of their
 consumers with this move. now I have to buy a new ps3 to keep the feature? HA! no
 more, sony. enough is enough. I'm contacting the better business bureau today to see
 what can be done about this treason. also I'm not updating my system and I plan on
 selling it in the very near future if something isn't done.

20 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Former-Sony-supporters/td-p/45468864/page/9;jsessionid=5CDBFE6684B1F4FE71318BCE7D0D7352>

21 I don't know how you figure. It absolutely entered my cost benefit analysis when
 22 choosing between PS3 and Xbox360. The PS3 needed every advantage it could get
 23 at launch and running linux was something the others could not claim. Remember,
 24 at the time there was no reason to believe that Blu Ray was going to be the standard.
 25 The only real advantage the PS3 had over the Xbox was Other OS. Xbox had more
 26 gamers and more games, still does. Xbox was already established in the market and
 27 many people had friends who were already using it. Both do High def 720p vs 1080p
 big deal, regardless image quality has been proven exactly the same time and again
 at all the review sites.Both have online features, Xbox is paid but the PS3 cost twice
 as much for the machine. Xbox had and still has the advantage with developers, see
 Carmack's latest statement on PS3 development. PS3 could run Linux, Xbox had no
 answer.

28 It factored into my decision and you'd be silly to think that it didn't factor into other
 people's decision as well since the PS3 had many disadvantages.

COMPLAINT CLASS ACTION; DEMAND FOR JURY TRIAL

1 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/conclusion-about-Other-OS-removal/td-p/45482145/page/4;jsessionid=C4EA02F5E4DC23A3D2BE40112FC6E8D7> (message 36; at 04-05-2010 01:30 PM)

3 I see in the news today that Sony is forcing me to make the decision: Keep my OtherOS install (software that I paid for) or keep my DLC working (other software that I paid for) -- It seems that soon enough I will not be permitted to keep both. This is an outrageous decision by Sony to be stripping away software that I have already purchased.

6 I am posting here to express my extreme disappointment in Sony over this decision. Like other features present in earlier models, Sony was honest and upfront about the fact they would be removing OtherOS support from their newest incarnation. When the Slim PS3 was announced, I *purposely* bought the 80GB "fat" PS3 so that way I could run the OtherOS. The OtherOS feature played a significant role in my decision to purchase Sony over "*that other box*".

9 Since buying the Sony box I've made numerous purchases from the PSN Store as well. Now Sony is telling me that I have to choose which purchases to give up because they aren't going to let me keep both. I am not sure how Sony believes they are entitled to revoke either one of these features: I have paid for my PS3 and the OtherOS, I continue to pay for PSN Content and I have never violated any of their ToS or given them any other reason to disable my account and/or the software that I have already purchased.

13 "Disgusted" is the best way to summarize my sentiments towards Sony at this time.

14 Why would I continue to purchase software from either a retailer or the PSN Store when Sony believes they can take it back at any time they like?

15 What prevents Sony from disabling other features that I paid for with my PS3, such as the media player, USB Storage support or heaven forbid even the Bluray drive? At this point in time the only decision I am sure of is to halt purchasing any PS3 hardware, retail games or any DLC from the PSN Store. I am not going to give another dime to a company who believes they have the right to remotely disable my software or hardware when I have done nothing wrong. I expect Sony to address these legitimate concerns shared by myself and countless others.

19 Incredibly disappointed with my choice to purchase Sony, -Brandon

20 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Not-Happy-About-OtherOS-Removal/td-p/45450175>

22 put linux on my ps3 cause I could. Now my hard drive is partitioned and what is the use of reformatting when all my copy protected stuff ain't gonna backup? Go buy a slim just to keep my files? FU sony this blows. I said it on the blog and I'll say it here: Worst update EVER.

24 Message no. 5,03-29-2010at 11:55A.M
available at:

25 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Not-Happy-About-OtherOS-Removal/td-p/45450175/page/6>

27 You can't compare the removal of backwards compatability with the removal of OtherOS support. Sony never took backwards capability away form users that had it included in their system. They had to purchase a system that did not included backwards compatability. Here they are removing a feature that was originally part of the purchsed unit. Its kind of like going out and buying a PS3 with a 160gig hdd

COMPLAINT CLASS ACTION; DEMAND FOR JURY TRIAL

1 and then sony changing the OS to only support hdd of size 10. You bought a unit
2 with 160 gig hdd you expect to be able to access and use all 160 gigs not only 10gigs.
03-29-2010 02:09 PM ; Message 71 at:

3 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Not-Happy-About-OtherOS-Removal/t-d-p/45450175/page/8>

4
5 I am also very unhappy with this move on Sony's part. I bought the PS3 as both a
6 Linux system, so I could learn how to develop on the Cell BE, and as a gaming
7 system. I was very happy with Sony's progressive move in allowing Linux to be
8 installed. Now they force me into this dilemma: Keep my Cell BE development
9 environment and lose access to PSN, or keep my access to PSN and lose my
devevelopment environment. I am officially an unhappy customer. I want to use your
fine products, Sony. I really do. But forcing me into a decision where I lose half the
value of my system is destined to make me look elsewhere in the future. Please
reverse this decision, and give those of us who enjoy gaming and using Linux on
your system a reason to be happy with you. 03-29-2010 03:49 PM Message 82

10 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Not-Happy-About-OtherOS-Removal/t-d-p/45450175/page/9>

11
12 Dear Sony, I am deeply disappointed to see that you will be removing the other OS
13 feature from my PS3. It really bothers me as a consumer that you would advertise a
14 feature for the PS3 such as this and then take it away a few years later. I feel like I
have been very loyal to you as a customer by purchasing a PS, PS2, PS3, PSP, LCD
TV, home theater system, and countless games and other accessories from you. The
fact you would remove the other OS feature and call it optional is like a slap in the

15
16 face after my years of support to the company. I bought my PS3 a few months after
17 having my computer stolen and the ability to install linux and satisfy my basic home
18 computing needs convinced me that I could afford to buy a PS3 for \$500. Since that
19 time I have bought many blu ray movies and games for my PS3. So for me to lose
either gaming/movies/PSN access would be devastating as would losing word
processing/online banking/enhanced internet browsing. As a longtime loyal customer,
I really hope you reconsider removing this feature you promised when I bought my
system. 03-30-2010 07:47 PM Message108 at

20 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Not-Happy-About-OtherOS-Removal/t-d-p/45450175/page/11>

21
22 This is exactly the point I've been trying to get across. linux functionality is a huge
23 part of my decision. its removal is nothing other than bait & swich, which btw IS
24 illegal. as is being blackmailed 2 either give in or be effectively banned from psn for
25 it. linux was also part of my decision to choose PS3 over that other system. Since
26 sony has revoked my legal right to use what I paid for and used legally I have
27 revoked sonys right to sell me more of their products. As I've previously stated I will
be making thousands of dollars of electronics purchases over the next 12 months,
sales that will now be going directly to sony's competitors instead of sony. The moral
of this lurid tale that sony failed to heed is "screw they customer & screw thyself"04-
01-2010 11:10 PM Message 120 at

28 <http://boardsus.playstation.com/t5/PlayStation-3-Updates/Not-Happy-About-OtherOS-Removal/t-d-p/45450175/page/12>

I have been a follower of Playstation products from PSX to PS2, to PSP, to PS3. I
have bought ALL of your systems, in fact multiple PSPs (diff generations) and I must

COMPLAINT CLASS ACTION; DEMAND FOR JURY TRIAL

1 say, I am VERY dissapointed in how this is turning out. My god Sony, this is like
 2 THEFT. I bought the console knowing that I could use it as a console / computer /
 3 BluRay play combo. Now, if you took away say, Bluray playing; now THAT would
 be the exact same thing you are doing here; removing a much touted feature that was
 on the box and advertised. Sony, think long and hard about this.

4 [http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-132/#com](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-132/#comments)
 5 [ments #6589 on April 7th, 2010 at 8:00 am](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-132/#comments)

6 People would probably be more upset if all of them realized this update is essentially
 7 the same as having someone break into your home and threaten you into letting them
 8 throw away a computer that you Purchased from them¼They're just breaking into
 9 your house and holding your family and friends (PSN) hostage until you agree to
 10 throw that cell processor based linux PC with an endless supply of free open-source
 applications¼ out into the trash! (even though physically it's going to continue to
 take up space in your living room as a gaming system¼Yep, there's definitely a
 reason to be a little ticked off.. and if companies can do this to their customers now,
 then the future seems pretty damn bleak. Message 6194 April 4th, 2010 at 8:56 pm
 available at

11 [http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-124/#com](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-124/#comments)
 12 [ments](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-124/#comments)

13 This is ridiculous decision by Sony. I'm never buying a Sony product again. As a
 14 consumer we make our purchases based on features and functionality being
 15 advertised. When I purchased my PS3 this feature was one which swayed my
 16 decision to buy a PS3. Taking away a feature we paid for and expected after dishing
 17 out a ridiculous amount of money for the console; then only to take it away in this
 update is ethically and morally wrong. Sony should be ashamed. In addition to deny
 us the ability to play the games we purchased already unless we update is bs. This is
 the last straw for me. After the 3 day outage that occurred a month or two ago this
 was their 3rd strike on my list. I'm gonna trash my ps3 and go get a xbox. Message
 no. 5903, April 3rd, 2010 at 10:22 am available at

18 [http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-119/#com](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-119/#comments)
 19 [ments](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-119/#comments)

20 I bought a 60GB Playstation(R)3 in 11/07 for \$500 because it was marketed as being
 21 able to be used as a computer by installing another operating system to it. This
 22 feature was highly publicized and played a pivotal role in my decision to buy the
 23 product. The "System Update" version 3.21, which was released on April 1, 2010 did
 not add any features or security patches. The 3.21 update disables the "Other OS
 (Operating System)" feature. If you do not download and install the "Update" you are
 not allowed to play games online, which is also a key feature. Thank you for your
 time. Message no.5725, April 2nd, 2010 at 4:20 pm available at

24 [http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-115/#com](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-115/#comments)
 25 [ments](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-115/#comments)

26 Here's a big screw u Sony from me & all the other linux PS3 users out there!The two
 27 reasons I purchased an original PS3 was for the BC & Linux abilities. I really hope
 28 someone sues them for this.FW updates continue to kill peoples consoles, I've had
 to pay three times now to have it repaired.How the hell can you sell something then
 take away its abilities?It's like selling a car & then removing the dashboard.Someone
 needs to start regulating this sort of thing so these big companies stop screwing over
 their customers.If you don't update you can't use any online features which are also

COMPLAINT CLASS ACTION; DEMAND FOR JURY TRIAL

1 a part of what the PS3 is supposed to do. Really, really sick of this continuing
2 gabage!* Would love to have used much stronger words in this post!!! Message no.
2137 on March 29th, 2010 at 11:23 pm available at:

3 [http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-115/#com](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-115/#comments)
4 [ments](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-115/#comments)

5 Believe it or not some of us are actually educated consumers. When the PS3 was
6 launched I read the entire box, I researched online, I watched Tv Shows about it, I
7 read magazines, I looked on websites/also YES I did know about the "other OS"
8 option! Are you a SONY Tool? I love their machines I've had PS1,PS2,& PS3's
never owned an xbox. Don't you get the principle of right & wrong? It's as simple
as THIS: I bought something. It said it would do something & now it won't = wrong.
Message no. 2143, March 29th, 2010 at 11:22 pm available at:

9 <http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment-page-43/#comments>

10 When I purchased my ps3, I was definitely under the impression that the linux
11 capability would never be removed. When the slim came out, Sony repeatedly stated
12 that this was true, putting me under an even stronger impression that this would
13 never, and could never be removed. Then they removed it citing vague "security"
14 reasons. That is not and should not be my concern, that should be Sony's concern.
15 Taking away something I already own is not a valid solution. It definitely does reduce
16 the value of the ps3 from what it originally was. Depending on how much people use
17 this feature, people with have different opinions as to how much the value has been
reduced. There is no argument anyone can give me that will convince me that my ps3
would not lose value no matter if this update is applied or not. The very existence of
the update itself causes a loss of value, as there is no way to retain the original value
of your ps3 at purchase, which included this feature, and allowed online games, etc.
By value I don't mean cost, but functionality, which is what I used to determine
whether the initial cost of the ps3 was worth it or not. 04-02-2010 04:21 AM
Message 521 at

18 [http://boardsus.playstation.com/t5/PlayStation-3-Updates/FW-3-21-and-Consumer-Right-s-Law-](http://boardsus.playstation.com/t5/PlayStation-3-Updates/FW-3-21-and-Consumer-Right-s-Law-No-Conjecture-Just-Facts/td-p/45454241/highlight/true/page/53)
19 [No-Conjecture-Just-Facts/td-p/45454241/highlight/true/page/53](http://boardsus.playstation.com/t5/PlayStation-3-Updates/FW-3-21-and-Consumer-Right-s-Law-No-Conjecture-Just-Facts/td-p/45454241/highlight/true/page/53)

20 Apparently, contacting the Better Business Bureau is a waste of time as Sony has a
21 "F" rating with them.

22 [http://www.bbb.org/greater-san-francisco/business-reviews/computers-software-and-services/son](http://www.bbb.org/greater-san-francisco/business-reviews/computers-software-and-services/sony-computer-entertainment-america-in-foster-city-ca-16128)
23 [y-computer-entertainment-america-in-foster-city-ca-16128](http://www.bbb.org/greater-san-francisco/business-reviews/computers-software-and-services/sony-computer-entertainment-america-in-foster-city-ca-16128)

24 **CLASS ACTION ALLEGATIONS**

25 33. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23 of the Federal
26 Rules of Civil Procedure, on behalf of a nationwide Class of all persons who purchased a PS3 during
27 the period from November 17, 2006 through March 27, 2010, and who still owned their PS3 as of
28 March 27, 2010.

33. Excluded from the Class are Defendant and any Sony parent, subsidiary, or affiliate
of Sony, any entity in which Sony has or had a controlling interest, or which Sony otherwise controls

1 or controlled, and any officer, director, employee, legal representative, predecessor, successor, or
2 assignee of Defendant Sony.

3 35. This action is brought as a class action for the following reasons:

4 a. Numerosity: The Class consists of millions of PS3 purchasers and is
5 therefore so numerous that joinder of all members is impracticable;

6 b. Commonality: Common questions of law or fact predominate over any
7 questions affecting only individual members of the proposed Class. Common questions include:

8 I. whether Sony breached contractual obligations by issuing firmware
9 3.21 for the purpose of crippling Plaintiffs' and other Class members' ability to use the PS3 features
10 for which they had paid;

11 ii. whether Sony violated the covenant of good faith and fair dealing;

12 iii. whether Sony unjustly enriched itself by retaining the entire sales price
13 for the PS3 despite having disabled valuable functions for which users initially paid;

14 iv. whether Sony violated the Consumer Legal Remedies Act (CLRA);

15 v. whether Sony violated the Unfair Competition Law (UCL);

16 vi. whether Sony's conduct was "unfair" within the meaning of the UCL;

17 vii. whether Sony's conduct was "unlawful" within the meaning of the
18 UCL;

19 viii. whether Sony's conduct was "fraudulent" within the meaning of the
20 UCL.

21 c. Typicality: The claims asserted by Plaintiffs are typical of the claims of the
22 members of the Class;

23 d. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
24 Class. Plaintiffs have retained attorneys experienced in class and other complex litigation;

25 e. Superiority: A class action is superior to other available methods for the fair
26 and efficient adjudication of the controversy, for at least the following reasons:

27 I. Absent a class action, Class members as a practical matter will be
28 unable to obtain relief from Sony's violations of its legal obligations and Sony will continue to retain

1 its ill-gotten gains;

2 ii. It would be a substantial hardship for most individual members of the
3 Class if they were forced to prosecute individual actions given the sums at issue;

4 iii. When the liability of Sony has been decided, the Court will be able
5 to determine the claims of all members of the Class;

6 iv. A class action will permit an orderly and expeditious administration
7 of Class claims, foster economies of time, effort, and expense and ensure uniformity of decisions;
8 and

9 v. The lawsuit presents no difficulties that would impede its management
10 by the Court as a class action;

11 f. Sony has acted on grounds generally applicable to all Class members, making
12 class-wide relief appropriate; and

13 g. The prosecution of separate actions by individual members of the Class would
14 create a risk of incompatible standards of conduct for Sony and of inconsistent or varying
15 adjudications for all parties.

16 **FIRST CAUSE OF ACTION**
17 **(Breach of Contract)**

18 36. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 35 as
19 if fully set forth herein.

20 37. Each Plaintiff purchased a PS3 with the justified expectation that Sony would
21 continue to support the Other OS function and other features and would not deliberately cripple those
22 functions. Plaintiffs and the other Class members paid more than they would have for competing
23 video consoles in order to obtain these added features.

24 38. Plaintiffs and the Class have fulfilled their obligation to Defendant Sony under the
25 sales contract by paying the PS3 asking price.

26 39. Despite the full performance by Plaintiffs and other Class members, Sony issued
27 Update 3.21, which forced purchasers to either install the firmware and lose the use of the Other OS
28 function or to give up other features and functions for which they had paid.

1 40. By forcing purchasers to give up the use of PS3 functions for which they paid, Sony
2 has materially breached its contract with Plaintiffs and the Class.

3 41. Sony has breached the parties' contract, forcefully withdrawn part of the benefit of
4 the bargain, and is liable to Plaintiffs and the Class.

5
6 **SECOND CAUSE OF ACTION**
(Breach of the Covenant of Good Faith and Fair Dealing)

7 42. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 41 as
8 if fully set forth herein.

9 43. As a direct and proximate result of Sony's actions, Plaintiffs and the Class have
10 suffered, and continue to suffer, injury in fact and have lost money.

11 44. Plaintiffs and the Class purchased PS3s with the expectation that they would be able
12 to continue to use all original functions for as long as they owned their PS3.

13 45. Sony has forced purchasers to give up some of the functions and performance for
14 which they contracted. Consequently, Plaintiffs and the Class have not received the benefit of their
15 bargain with Sony, and the essential purpose of the PS3 sales contract has been frustrated.

16 46. Sony has therefore breached the covenant of good faith and fair dealing and is liable
17 to Plaintiffs and the Class.

18 **THIRD CAUSE OF ACTION**
19 **(California Unfair Competition Law)**

20 47. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 46 as
21 if fully set forth herein.

22 48. California's Unfair Competition Law, Business and Professions Code section 17200,
23 et seq., prohibits any "unlawful, unfair or fraudulent business act or practice."

24 49. Sony promoted the availability of the Other OS feature, as well as other PS3 features,
25 and support of those functionalities by Sony. Sony has unilaterally withdrawn that availability and
26 support, and Plaintiffs and the Class have thereby been deprived of the benefit of their bargain.
27 Sony's conduct is fraudulent under the Unfair Competition Law.

28 50. Forcing purchasers to choose between the Other OS function and gaming features is
unfair because the injury to consumers is substantial, is not outweighed by any countervailing

1 benefits to consumers or Sony's competition, and is not an injury consumers themselves could
2 reasonably have avoided. As a result of Sony's wrongful conduct, the Plaintiffs and the Class lost
3 money.

4 51. Plaintiffs and the Class lost money by purchasing a PS3 without receiving the benefit
5 of their bargain because the product is not what it was claimed to be – a game console that would
6 provide both the Other OS feature and gaming functions.

7 52. Sony's advertisements concerning the PS3 were untrue, deceptive and/or misleading.
8 Sony's advertisements induced Plaintiffs and the Class to make purchases they would not have made
9 if they had been in possession of all of the material facts.

10 53. As a direct and proximate consequence of Sony's conduct, Plaintiffs and the Class
11 suffered an ascertainable loss of money, including but not necessarily limited to the purchase price
12 of PS3s, the amount of such loss to be determined at trial.

13 54. By reason of the foregoing, Sony is liable to Plaintiffs and the Class for restitution,
14 including a sum equal to the amount of a refund of all monies acquired by reason of Sony's sale of
15 PS3s.

16
17 **FOURTH CAUSE OF ACTION**
(California's Consumers Legal Remedies Act)

18 55. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 54 as
19 if fully set forth herein.

20 56. In making the representations and omissions described herein, Sony violated
21 California's Consumers Legal Remedies Act by representing that the PS3 had characteristics, uses,
22 or benefits which it did not have, in violation of Civil Code §1770(a)(5). Specifically, Sony
23 represented that the PS3 had the Other OS feature while simultaneously omitting the material fact
24 that the Other OS feature would likely not be available in the future. Therefore, Plaintiffs and
25 members of the Class seek appropriate injunctive relief.

26 57. Sony also violated Civil Code §1770(a)(19) by inserting one or more unconscionable
27 provisions into a contract. Sony's insertion of the following clauses into the System Software
28 License Agreement was unconscionable:

1 “Some services may change your current settings, cause a loss of data or content, or
2 cause some loss of functionality.”

3 “SCE, at its sole discretion, may modify the terms of this Agreement at any time,
4 including any terms in the PS3™ system documentation or manual, or at
5 <http://www.scei.co.jp/ps3-license/index.html>. Please check back on this website
6 from time to time for changes to this Agreement. Your continued access to or use
7 of the System Software will signify your acceptance of any changes to this
8 Agreement.”

9 58. Sony used its superior bargaining strength to impose those terms upon customers, and
10 customers had no meaningful choice whether to accept or reject these provisions. The System
11 Software License Agreement was the product of oppression and the lack of negotiation, not any
12 meaningful choice.

13 59. After contracting for the purchase of a PS3, Plaintiffs and the Class had no ability to
14 negotiate the System Software License Agreement’s terms, which was only provided to them after
15 they purchased the PS3.

16 60. In addition, Sony placed these provisions within its small-type, prolix form, under
17 unclear headings.

18 61. These provisions are, accordingly, procedurally unconscionable.

19 62. Sony sought by these terms to create for itself an unlimited ability to alter the System
20 Software License Agreement and the functions of the PS3 as it saw fit and without any consideration
21 to Plaintiffs or other Class members.

22 63. These provisions are one-sided, unreasonably favorable to Sony, uniquely favor Sony
23 at the expense of customers, and Sony clearly buried these terms in its standard-form contract to gain
24 unfair advantage over its customers.

25 64. These terms are substantively oppressive because they reallocate risk between
26 consumers and Sony in an objectively unreasonable and unexpected manner by permitting Sony to
27 change the System Software License Agreement and the PS3 functionalities to protect its interests
28 in complete derogation of the rights of consumers.

65. Consequently, these provisions are unduly oppressive and unconscionable.

66. Therefore, if Sony seeks to defend its conduct based on these provisions, Plaintiffs
and the Class request injunctive relief requiring Sony to cease enforcement of the unconscionable

1 contract provisions.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiffs ask the Court to enter judgment against Sony as follows:

4 A. Certify this action as a class action, pursuant to Rule 23(a) and 23(b)(3) of the
5 Federal Rules of Civil Procedure;

6 B. Award Plaintiffs and the Class all appropriate remedies, including but not
7 limited to damages;

8 C. Restitution of all or part of the money paid and disgorgement of all profits
9 unjustly retained by Sony;

10 D. Plaintiffs' injunctive relief;

11 E. Interest, costs and attorneys' fees; and

12 F. Such other and further relief as this Court deems just and proper.

13 DATED: April 30, 2010

Connor & Bishop

14
15 By:

16 Charles S. Bishop, Esq.
Attorney for Plaintiffs

17
18 **DEMAND FOR TRIAL BY JURY**

19 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial
20 by jury.

21 DATED: April 30, 2010

Connor & Bishop

22
23 By:

24 Charles S. Bishop, Esq.
Attorney for Plaintiffs