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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

17 YOLANDA TREJO, Individually and )  
 18 Behalf of Herself and All Others Similarly )  
 Situated, )  
 19 )  
 Plaintiff, )  
 20 )  
 vs. )  
 21 )  
 22 SONY COMPUTER ENTERTAINMENT )  
 AMERICA LLC, SONY NETWORK )  
 ENTERTAINMENT INTERNATIONAL LLC )  
 23 and SONY NETWORK ENTERTAINMENT )  
 AMERICA INC., )  
 24 )  
 Defendants. )

CV 11

2408

CLASS ACTION

COMPLAINT FOR:

- (1) NEGLIGENCE;
- (2) BREACH OF CONTRACTS TO WHICH PLAINTIFF AND CLASS MEMBERS WERE THIRD PARTY BENEFICIARIES;
- (3) BREACH OF EXPRESS CONTRACTS;
- (4) BREACH OF IMPLIED CONTRACTS

DEMAND FOR JURY TRIAL

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27  
28

1 Plaintiff Yolanda Trejo ("Plaintiff") hereby brings this class action suit against Sony  
2 Computer Entertainment America, LLC ("SCEA"), Sony Network Entertainment International LLC  
3 ("SNEI"), and Sony Network Entertainment America, Inc. ("SNEA") (collectively, "SONY", the  
4 "Company" or "Defendant"). Plaintiff makes the following allegations upon information and belief,  
5 except for those allegations pertaining to Plaintiff, which are based on personal knowledge. The  
6 following allegations are based upon the investigation undertaken by Plaintiff's counsel, which  
7 included, *inter alia*, review and analysis of SONY's press releases, SONY's public statements,  
8 SONY's websites and various news articles and media reports.

### 9 NATURE OF THIS ACTION

10 1. Plaintiff brings this class action suit on her own behalf and on behalf of all other  
11 persons or entities in the United States who subscribe to SONY Online Services (defined below),  
12 and (a) have been denied access to the SONY Online Services they have already paid SONY to use;  
13 and (b) have provided SONY with private financial and personal information, and had such  
14 information stolen or compromised due to SONY's wrongful conduct. This suit seeks to redress  
15 SONY's: (1) suspension of SONY's Online Services; (2) misrepresentations as to the adequacy of its  
16 online security architecture; and (3) failure to adequately safeguard consumers' private financial and  
17 personal information, including their names, email addresses, birthdates, mailing addresses, billing  
18 addresses, purchase histories, passwords and logins, password security answers, handles/online IDs,  
19 and credit card and debit card information.

20 2. As reported, SONY experienced a security breach that likely caused SONY Online  
21 Services' 77 million users to have their private financial and personal information stolen or  
22 compromised. Moreover, Plaintiff and the Class have been denied use of services they have  
23 contracted for and have been deprived of the ability to use their SONY PlayStation consoles.  
24 Although SONY knew about the breach for several days and even prevented users from accessing its  
25 Online Services, it delayed for days informing users that their private financial and personal  
26 information had been stolen or compromised. Such delay likely caused many users' private financial  
27 and personal information to be subject to unauthorized use without their knowledge or denied them  
28

1 the opportunity to take appropriate protective measures, such as alerting credit reporting companies  
2 or cancelling their credit cards.

### 3 **INTRADISTRICT ASSIGNMENT**

4 3. A substantial part of the events or omissions which give rise to the claims in this  
5 action occurred in the county of San Mateo, and as such this action is properly assigned to the San  
6 Francisco division of this Court.

### 7 **JURISDICTION AND VENUE**

8 4. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the  
9 State of New York and Defendant SONY is incorporated in the State of Delaware, with its corporate  
10 headquarters in California. Upon information and belief, the amount in controversy is in excess of  
11 \$5,000,000, exclusive of interests and costs.

12 5. Venue is proper in this Court because many members of the Class reside in the  
13 Northern District of California, a portion of the events or omissions giving rise to the claims herein  
14 occurred in this district, and Defendant SONY does business and advertises within the Northern  
15 District of California and throughout the State of California.

### 16 **THE PARTIES**

17 6. Plaintiff Yolanda Trejo is a citizen of the State of New York, Bronx County, and first  
18 purchased a SONY PlayStation 3 console, the PlayStation Network (“PSN”) service and multiplayer  
19 games for use on the PSN service in New York on or about February 8, 2011. Plaintiff noticed she  
20 had lost access to PSN, but did not know of the security breach and loss of her personal and credit  
21 card data stored on SONY’s servers.

22 7. Defendant SCEA is a Delaware limited liability company founded in 1994 as the  
23 North American division of Sony Computer Entertainment Inc. SCEA’s principal offices are located  
24 in Foster City, California.

25 8. Defendant SNEI is a Delaware limited liability company with its principal offices  
26 located in Los Angeles, California.

27 9. Defendant SNEA operates SONY Online Services in parts of North America,  
28 including the PlayStation Network and Qriocity (defined below).

## SUBSTANTIVE ALLEGATIONS

### **The SONY Online Services Security Breach**

10. SONY manufactures and sells a line of computer entertainment/gaming systems under the brand-name "PlayStation." SONY launched the third generation of its PlayStation system, the PlayStation 3, on November 17, 2006. As of March 29, 2011, SONY had sold 50 million PlayStation 3 units worldwide.

11. In November, 2006, SONY launched the PlayStation Network ("PSN") to provide community-centric online game-play and communication tools and offered vast downloadable digital content. PSN users can rent or purchase thousands of their favorite movies and television shows as well as download games and demos from the PlayStation Store. In addition, users have access to streaming movies and television shows through Netflix and the ability to connect with friends through the virtual and social community known as PlayStation Home. SONY's PSN service produces an estimated \$500 million in annual revenues. As of March 20, 2011, the PSN service had more than 75 million registered accounts and operated in 59 countries and regions around the world.

12. On February 17, 2011, SONY launched its cloud music service, Music Unlimited powered by Qriocity ("Qriocity"), in the United States. For \$10 per month, Qriocity subscribers receive access to music from all four major record labels and 6 million tracks. Music is streamed through the Internet from SONY's servers to SONY devices, including the PlayStation 3. Users cannot access their music without Internet availability, as none of the music is stored locally or on the user's own hard drive.

13. When announcing Qriocity, SONY touted that the service had been built on the "stable" and established PSN. According to Tim Schaaf, the President of Sony Network Entertainment: "The PlayStation Network has been in the marketplace since 2006 and has been growing customers for four years. There are 70 million accounts worldwide... It has gaming, music, movies and all kinds of e-commerce. It is a stable business, and rather than starting from scratch, we decided to leverage that."

1           14.     Upon information and belief, SONY stores PSN and Qriocity services (collectively,  
2 the “SONY Online Services”) users’ data, including names, addresses, credit card information and  
3 passwords on its internal servers (“User Private Information”).

4           15.     On April 19, 2011, the SONY Online Services suddenly shut down. SONY Online  
5 Services users, like Plaintiff, were unable to access their services or utilize digital and online content.

6           16.     On April 20, 2011, Patrick Seybold (“Seybold”), the Senior Director of Corporate  
7 Communications and Social Media for SONY, posted an “Update On PSN Service Outages” on the  
8 official PlayStation blog (the “PlayStation blog”) that acknowledged that “certain functions” of the  
9 PSN were “down,” but provided no information about the cause of the disruption or whether any  
10 User Private Information was compromised. The brief and vague update stated in its entirety:  
11 “We’re aware certain functions of PlayStation Network are down. We will report back here as soon  
12 as we can with more information. Thank you for your patience.”

13           17.     On April 22, 2011, Seybold posted an “Update On PlayStation Network/Qriocity  
14 Services,” which for the first time explained that SONY’s PSN and Qriocity services had suffered an  
15 “external intrusion” and were subsequently disabled on the evening of April 20, 2011. The update  
16 did not explain when the “external intrusion” had occurred, the nature or extent of the intrusion, and  
17 whether any User Private Information had been lost or compromised. The update stated in part:

18           An external intrusion on our system has affected our PlayStation Network and  
19 Qriocity services. In order to conduct a thorough investigation and to verify the  
20 smooth and secure operation of our network services going forward, we turned off  
21 PlayStation Network & Qriocity services on the evening of Wednesday, April 20th.

22           18.     On April 23, 2011, Seybold posted a “Latest Update for PSN/Qriocity Services,”  
23 which revealed that SONY was “re-building” its system to “strengthen our network infrastructure.”  
24 The update did not reveal known weaknesses in SONY’s security architecture and did not explain  
25 the nature or extent of the intrusion that had caused SONY to shut down its PSN system or whether  
26 any User Private Information had been lost or compromised.

27           19.     On April 25, 2011, Seybold posted another “PSN Update,” which again failed to  
28 provide users with detailed information about the “external intrusion” or alert users to the possible  
loss or compromise of User Private Information. The update stated:

1 I know you are waiting for additional information on when PlayStation Network and  
2 Qriocity services will be online. **Unfortunately, I don't have an update or  
timeframe to share at this point in time.**

3 20. On April 26, 2011, Seybold posted another "Update on PlayStation Network and  
4 Qriocity" that, for the first time, acknowledged that there had been a "compromise of personal  
5 information as a result of an illegal intrusion on our systems" that had been discovered between  
6 April 17 and April 19, 2011. The update, which was accompanied by a lengthier press release, also  
7 stated that SONY was working on sending a similar message to all of its registered account holders  
8 via email. The update stated in part:

9 We are currently working to send a similar message to the one below via email to all  
10 of our registered account holders regarding a **compromise of personal information  
as a result of an illegal intrusion on our systems. These malicious actions have  
11 also had an impact on your ability to enjoy the services provided by PlayStation  
Network and Qriocity including online gaming and online access to music,  
12 movies, sports and TV shows.**

13 21. The SONY press release accompanying the April 26, 2011 update stated that "an  
14 unauthorized person" had obtained sensitive customer information, including customer names, email  
15 addresses, birthdates, mailing addresses, billing addresses, purchase histories, PlayStation  
16 Network/Qriocity passwords and logins, password security answers, handles/PSN online IDs, and  
17 possibly (not confirmed) credit card data, including credit card numbers and expiration dates. The  
18 press release stated in pertinent part:

19 **Valued PlayStation Network/Qriocity Customer:**

20 We have discovered that **between April 17 and April 19, 2011, certain PlayStation  
Network and Qriocity service user account information was compromised in  
21 connection with an illegal and unauthorized intrusion into our network. In  
response to this intrusion, we have:**

22 Temporarily turned off PlayStation Network and Qriocity services;

23 \* \* \*

24 Although we are still investigating the details of this incident, we believe that **an  
unauthorized person has obtained the following information that you provided:  
25 name, address (city, state, zip), country, email, address, birthdate, PlayStation  
Network/ Qriocity password and login, and handle/PSN online ID. It is also  
26 possible that your profile data, including purchase history and billing address  
(city, state, zip), and your PlayStation Network/Qriocity password security  
27 answers may have been obtained. If you have authorized a sub-account for your  
dependent, the same data with respect to your dependent may have been obtained.  
28 While there is no evidence at this time that credit card data was taken, we**

1 cannot rule out the possibility. If you have provided your credit card data  
2 through PlayStation Network or Qriocity, out of an abundance of caution we  
3 are advising you that your credit card number (excluding security code) and  
4 expiration date may have been obtained.

5 22. The April 26, 2011 "Clarifying" update provided a hyperlink to a set of  
6 "PSN/Qriocity Network Outage FAQs." Notwithstanding SONY's recognition that the unavailability  
7 of the SONY Online Services "may have had financial impact on our loyal customers," it did not  
8 represent that customers would get their money back (subscription fee, content) but only stated that  
9 it was "currently reviewing options."

10 23. In addition to SONY's own blog posts and press releases, numerous media reports  
11 described the SONY Online Services security breach, shutdown and loss of User Private  
12 Information. According to various media reports, the SONY Online Services security breach  
13 represents one of the largest-ever Internet security break-ins in history, affecting 77 million user  
14 accounts.

15 24. On April 26, 2011, Senator Richard Blumenthal (D-CT) wrote a letter to the President  
16 and CEO of SCEA, Jack Tretton "demanding answers over the company's failure to notify millions  
17 of customers of a data breach in the PlayStation Network." The body of Senator Blumenthal's letter  
18 is provided below:

19 I am writing regarding a recent data breach of Sony's PlayStation Network  
20 service. **I am troubled by the failure of Sony to immediately notify affected  
21 customers of the breach and to extend adequate financial data security  
22 protections.**

23 It has been reported that on April 20, 2011, Sony's PlayStation Network  
24 suffered an "external intrusion" and was subsequently disabled. News reports  
25 estimate that 50 million to 75 million consumers - many of them children - access the  
26 PlayStation Network for video and entertainment. I understand that the PlayStation  
27 Network allows users to store credit card information online to facilitate the  
28 purchasing of content such as games and movies through the PlayStation Network. **A  
breach of such a widely used service immediately raises concerns of data  
privacy, identity theft, and other misuse of sensitive personal and financial data,  
such as names, email addresses, and credit and debit card information.**

**When a data breach occurs, it is essential that customers be immediately  
notified about whether and to what extent their personal and financial  
information has been compromised.** Additionally, PlayStation Network users  
should be provided with financial data security services, including free access to  
credit reporting services, for two years, the costs of which should be borne by Sony.  
**Affected individuals should also be provided with sufficient insurance to protect  
them from the possible financial consequences of identity theft.**

1 I am concerned that PlayStation Network users' personal and financial  
2 information may have been inappropriately accessed by a third party.  
3 **Compounding this concern is the troubling lack of notification from Sony about**  
4 **the nature of the data breach. Although the breach occurred nearly a week ago,**  
5 **Sony has not notified customers of the intrusion, or provided information that is**  
6 **vital to allowing individuals to protect themselves from identity theft, such as**  
7 **informing users whether their personal or financial information may have been**  
8 **compromised. Nor has Sony specified how it intends to protect these**  
9 **consumers.**

6 PlayStation Network users deserve more complete information on the data  
7 breach, as well as the assurance that their personal and financial information will be  
8 securely maintained. I appreciate your prompt response on this important issue.

8 25. Upon information and belief, the SONY Online Services security breach is also being  
9 investigated by the United States Federal Bureau of Investigations ("FBI"), the House of  
10 Representatives Subcommittee for Commerce, Manufacturing and Trade, attorneys general in Iowa,  
11 Florida and Massachusetts, and Britain's Information Commissioner's Office.

12 26. On April 28, 2011, Seybold posted a "Q&A #2 for PlayStation Network and Qriocity  
13 Services," which addressed some of the "more game related" questions SONY had received. One  
14 question addressed whether users would receive a "goodwill gesture" for the time they were unable  
15 to access the SONY Online Services. As with a previous question about receiving compensation for  
16 not being able to use the services, SONY equivocated and failed to state whether users would be  
17 granted compensation.

18 27. According to the April 1, 2011 Revised Privacy Policy applicable to users of SONY  
19 Online Services, SONY collects User Private Information, including credit card information and  
20 "maintain and store[s]" such information for future purchases:

21 Personally identifying information is needed to establish a Sony Online Services  
22 account. **In order to set up a PSN account and access these services, you must**  
23 **provide your date of birth, name, mailing address, and email address. In order**  
24 **to set up a Qriocity account, you must provide your date of birth and email**  
25 **address. You may choose to provide valid credit card information at the time of**  
26 **registration. If you wish to make a purchase through Sony Online Services and**  
27 **would like to pay for that purchase with a credit card, you will be required to provide**  
28 **valid credit card information at the time of purchase. We maintain and store credit**  
**card information (other than CVV) provided by consumers for purposes of**  
**charging future purchases.**

28 28. For minors under the age of 13, SONY maintains the "child's personally identifying  
information" along with a "valid credit card" to confirm parental consent.





1 Class members were third-party beneficiaries; 3) SONY breached an implied contract; and 4) SONY  
2 breached an express contract.

3 (b) Whether SONY misrepresented the SONY Online Services capabilities to  
4 protect User Personal Information;

5 (c) Whether SONY concealed and did not disclose the defects in the SONY  
6 Online Services capabilities to protect User Personal Information;

7 (d) Whether SONY unreasonably delayed in remedying the suspension of service;

8 (e) Whether SONY unreasonably delayed in alerting users to the security breach  
9 and informing users that their User Personal Information had been stolen or compromised; and

10 (f) The measure of damages.

11 36. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical of the  
12 claims of each member of the Class, in that Plaintiff, as every member of the Class, was a customer  
13 of SONY and SONY Online Services user, experienced a suspension of SONY Online Services, was  
14 not timely informed that a security breach had caused the suspension of services, and was not timely  
15 informed that User Personal Information had been stolen or compromised. Plaintiff is entitled to  
16 relief under the same causes of action as the other members of the Class and is subject to no unique  
17 defenses.

18 37. Adequacy: Plaintiff is an adequate representative of the Class because her interests do  
19 not conflict with the interests of the members of the Class she seeks to represent; she has retained  
20 counsel competent and experienced in complex class action litigation and they intend to prosecute  
21 this action vigorously. Plaintiff has no interests which conflict with those of the Class. The interests  
22 of members of the Class will be fairly and adequately protected by Plaintiff and her counsel.

23 38. SONY has acted on grounds generally applicable to the Class, making relief  
24 appropriate with respect to Plaintiff and the members of the Class. The prosecution of separate  
25 actions by individual Class members would create a risk of inconsistent and varying adjudications.

26 39. Superiority: A class action is superior to the other available methods for the fair and  
27 efficient adjudication of this controversy because:  
28

1 (a) The joinder of thousands of individual members of the Class is impracticable,  
2 cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

3 (b) The individual claims of the members of the Class now may be relatively  
4 modest compared with the expense of litigating the claim, thereby making it impracticable, unduly  
5 burdensome, expensive, if not totally impossible, to justify individual actions;

6 (c) When SONY's liability has been adjudicated, claims of all members of the  
7 Class can be determined by the court and administered efficiently in a manner which is far less  
8 burdensome and expensive than if it were attempted through filing, discovery, and trial of all  
9 individual cases;

10 (d) This class action will promote orderly, efficient, expeditious, and appropriate  
11 adjudication and administration of class claims to promote economies of time, resources, and limited  
12 pool of recovery;

13 (e) Plaintiff knows of no difficulty to be encountered in the management of this  
14 action that would preclude its maintenance as a class action;

15 (f) This class action will assure uniformity of decisions among members of the  
16 Class; and

17 (g) The Class is readily definable and prosecution of this action as a class action  
18 will eliminate the possibility of repetitious litigation.

19 **COUNT I**

20 **Negligence**

21 40. Plaintiff repeats and realleges each and every allegation above as if set forth in full  
22 herein.

23 41. SONY assumed a duty to keep the User Personal Information of Plaintiff and the  
24 Class that is in their possession private and secure. By their acts and omissions described herein,  
25 SONY unlawfully breached this duty. The Class was damaged thereby.

26 42. The private information of the Class that was stolen or compromised by the breach of  
27 SONY's security includes, without limitation, information that was being improperly stored and  
28 inadequately safeguarded in violation of, among other things, industry rules and regulations.



1 third parties. These express and implied contracts required that SONY and the third parties take  
2 reasonable efforts to safeguard the User Personal Information of Plaintiff and the Class.

3 51. SONY and these third parties breached these contracts, and, as a result of these  
4 breaches, Plaintiff and the Class have been harmed as alleged herein.

### 5 **COUNT III**

#### 6 **Breach of Express Contracts**

7 52. Plaintiff repeats and realleges each and every allegation above as if set forth in full  
8 herein.

9 53. Defendant agreed to, among other things, provide uninterrupted PSN service, and  
10 properly maintain Plaintiff's and Class members' data. In exchange, Class members agreed to  
11 purchase PlayStation consoles and PSN service.

12 54. Valid consideration existed, as Plaintiff and Class members paid money in exchange  
13 for Defendant's agreement to, among other things, maintain Plaintiff's and Class members' data and  
14 provide uninterrupted service.

15 55. The parties' agreement is contained in customer contracts and related documents.

16 56. Defendant breached its contracts because Defendant did not properly maintain  
17 Plaintiff's and Class members' electronic information or provide uninterrupted service.

18 57. Plaintiff and Class members suffered and will continue to suffer damages including,  
19 but not limited to, loss of their electronic information and an interruption in service.

### 20 **COUNT IV**

#### 21 **Breach of Implied Contracts**

22 58. Plaintiff repeats and realleges each and every allegation above as if set forth in full  
23 herein.

24 59. When providing User Personal Information to SONY in order to transact business  
25 through and access SONY Online Services, Plaintiff and the Class entered into implied contracts  
26 with SONY such that SONY would safeguard this information and notify them promptly of any and  
27 all theft of this information. Implied contracts arose from the course of conduct between the parties,  
28 as well as disclosures on Defendant's websites, in advertising materials, on product packaging,

1 and/or in customer contracts. For example, Defendant disclosed on numerous occasions as alleged  
2 herein that users' data would not be disclosed to third parties. The disclosures created a reasonable  
3 expectation that users' data would be adequately maintained, and that PSN functionality would be  
4 continuously available.

5 60. Valid consideration existed, as Plaintiff and Class members paid money to Defendant  
6 in exchange for Defendant's agreement to, among other things, maintain users' data and provide  
7 uninterrupted PSN service.

8 61. In addition, Plaintiff and the Class entered into implied contracts with SONY such  
9 that SONY would compensate users for service interruptions.

10 62. Without such implied contracts, customers (including Plaintiff and the Class) would  
11 not have provided their User Personal Information to transact business through or subscribe to  
12 SONY Online Services.

13 63. SONY breached these implied contracts, and, as a result of these breaches, Plaintiff  
14 and the Class have been harmed as alleged herein.

15 64. Plaintiff and Class members suffered and will continue to suffer damages including,  
16 but not limited to, loss of their personal, private, financial information and an interruption in service.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for relief and judgment  
19 as follows:

20 A. Declaring this action properly maintainable as a class action pursuant to Rules 23(a)  
21 and 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiff to be a proper  
22 representative of the Class;

23 B. Awarding Plaintiff and the other members of the Class damages in an amount to be  
24 proven at trial, together with prejudgment interest thereon;

25 C. Awarding Plaintiff the costs and expenses incurred in this action, including  
26 reasonable attorneys' and experts' fees;

1 D. An order requiring Defendant to immediately cease its wrongful conduct as set forth  
2 above; enjoining Defendant from continuing to falsely market and advertise, conceal material  
3 information and conduct business via the unlawful and unfair business acts and practices complained  
4 of herein; ordering Defendant to engage in a corrective notice campaign; and requiring Defendant to  
5 refund to Plaintiff and all members of the Class the funds paid to Defendant for the defective  
6 PlayStations and PSN services; ordering Defendant to pay for credit card monitoring for Plaintiff  
7 and all members of the Class; and

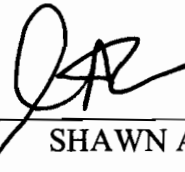
8 E. Granting Plaintiff and the other members of the Class such other and further relief as  
9 the Court deems just and proper.

10 **JURY DEMAND**

11 Plaintiff hereby demands a trial by jury.

12 DATED: May 17, 2011

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