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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

L'MARC TURNER ROHIT BURANI,  
ENRIQUE AVELAR, CHRISTIAN PEREZ,  
STEFAN MCSHANE, and MICHELLE  
MCGUCKIN, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

SONY INTERACTIVE ENTERTAINMENT,  
INC.,

Defendant.

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Case No.: 4:21-cv-02454-DMR

**PLAINTIFFS' FIRST AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

JUDGE: Hon. Donna M. Ryu  
CTRM: 4 – 3rd Floor

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1 Plaintiffs L'marc Turner, Rohit Burani, Enrique Avelar, Christian Perez, Stefan McShane, and  
 2 Michelle McGuckin individually, and on behalf of all others similarly situated, by and through counsel,  
 3 brings this action against Defendant Sony Interactive Entertainment LLC ("Defendant" or "Sony").  
 4 Plaintiffs' allegations herein are based upon personal knowledge and belief as to his own acts and upon  
 5 the investigation of his counsel and information and belief as to all other matters.

## 6 INTRODUCTION

7 1. This is a class action lawsuit brought against Sony by Plaintiffs on behalf of themselves  
 8 and all other similarly situated consumers who purchased the defective Sony PlayStation 5 ("PS5")  
 9 DualSense Wireless Controllers for the PS5 console (referred to herein as "DualSense Controller").

10 2. The DualSense Controller is manufactured, marketed, and sold by Sony. It is the  
 11 controller for Sony's latest and highly sought-after gaming console, the PS5. The DualSense Controller  
 12 Prior was released alongside the PlayStation 5 in November of 2020. At a Sony CES press conference  
 13 in mid-January, PlayStation President and CEO dubbed the launch of the PlayStation5 the "biggest  
 14 console launch of all time," deeming it the "best console launch in history."<sup>1</sup> As of mid-January 2021,  
 15 best estimates suggested that the PS5 moved over four million units since launch.<sup>2</sup> Sony described the  
 16 DualSense controller as "bring[ing] gaming worlds to life," and including such "next-generation features  
 17 like haptic feedback and dynamic adaptive triggers."<sup>3</sup>

18 3. Contrary to these claims, however, the DualSense Controller suffers from an inherent  
 19 defect. Specifically, the DualSense Controllers that are used to operate the PS5 contain a defect that  
 20 results in characters or gameplay moving on the screen without user command or manual operation of  
 21 the joystick ("Drifting" or the "Drift Defect"). As discussed further below, the potentiometer within the  
 22 joystick component—the mechanism that translates the physical movement of the joystick into

23  
 24 <sup>1</sup> Brianna Reves *PS5 Is 'Biggest Console Launch Of All Time' According to PlayStation CEO*,  
 25 SCREENRANT (Jan. 11, 2021), <https://screenrant.com/ps5-biggest-console-launch-all-time-playstation-ceo/> (last visited May 5, 2021).

26 <sup>2</sup> See Scott Baird, *PS5 Sells Over 4 Million United Since Launch & Shows No Signs Of Stopping*,  
 27 SCREENRANT (Jan. 3, 2021), <https://screenrant.com/ps5-sales-4-million-xbox-series-nintendo-switch/>  
 28 (last visited May 5, 2021).

<sup>3</sup> See <https://direct.playstation.com/en-us/accessories/accessory/dualsense-wireless-ps5-controller.3005715?smcid=pdc:us-en:web-pdc-accessories-dualsense-wireless-controller:buttonblock-buy-now> (last visited May 5, 2021).



1 movement within the video game—contains a design flaw such that the wiper component of the  
 2 potentiometer becomes coated with a grease-like lubricant that causes resistive carbon material scraped  
 3 off of a curved track within the potentiometer to adhere to the wiper which renders unwanted movement  
 4 without input from the user. This defect significantly interferes with gameplay and thus compromises  
 5 the DualSense Controller’s core functionality.

6 4. Sony is—and at all relevant times has been—aware of the Drift Defect through online  
 7 consumer complaints, complaints made by consumers directly to it, and through its own pre-release  
 8 testing. Since the PS5 was released last November, players have taken to social media to share stories  
 9 about DualSense drift. One user reported the issue 10 days after receiving the PS5 console, state that  
 10 they tried every possible fix—power-cycling the console, turning Bluetooth on and off, resetting the  
 11 controller, and charging it fully overnight—to no avail.<sup>4</sup> In addition to the now thousands of online  
 12 complaints, there has been significant negative publicity surrounding the Drift Defect in the gaming  
 13 community.<sup>5</sup>

14 5. The Drift phenomenon is something that gamers are all too familiar with, having also  
 15 plagued similar controllers from other manufacturers. The DualSense Controller’s predecessor, the  
 16 DualShock 4 for PlayStation 4, was also reportedly subject to drifting, with scores of consumers  
 17 complaining about the virtually same drift issues.

18 6. The drifting phenomenon has garnered both domestic and international scrutiny as well,  
 19 with consumer advocacy groups in France, Belgium and Switzerland investigating drift activity in a

21 <sup>4</sup> Ari Nortis, *PS5 Controllers Are Drifting, And The Repairs Are A Hassle*, KOTAKU (Feb. 9, 2021),  
 22 <https://kotaku.com/ps5-controllers-are-drifting-and-the-repairs-are-a-has-1846233739> (last visited May 5, 2021).

23 <sup>5</sup> See, e.g., Saqib Mansoor, *Some DualSense Controllers Have Started Drifting*, SEGMENTNEXT  
 24 (December 11, 2021), <https://segmentnext.com/2020/12/01/dualsense-controllers-drifting/> (last visited  
 25 May 5, 2021) (remarking on the drifting issue as “plaguing a few DualSense controllers barely a month  
 26 into the PlayStation 4 launch); Jessica Andrews, *Reports of PS5 ‘Stick Drift’ Surface Weeks After Launch*, CBR (Nov. 30, 2020), <https://www.cbr.com/report-ps5-stick-drift-issue/> (last visited May 5,  
 27 2021) (noting that various online users have been experiencing drift within weeks of PS5’s launch,  
 28 including one Reddit user quoted as saying “DualSense is probably the most next-gen feature right next  
 to the SSD but at the end of the day it's just a controller with normal controller problems”); Richard  
 Breslin, *DualSense Drift is Already a Problem For Some PS5 Gamers*, GAMEBYTE (Dec. 1, 2020),  
<https://www.gamebyte.com/dualsense-drift-is-already-a-problem-for-some-ps5-gamers/> (last visited  
 May 5, 2021) (explaining that “there has been a lot of hype surrounding the DualSense controllers so  
 this news is especially disappointing, but [drift] is something now being reported by multiple gamers.”).

popular controller from another manufacturer.<sup>6</sup> Accordingly, Sony has been on notice of the existence of the drift for years.

7. Notwithstanding its knowledge of the Drift Defect, Sony has failed to disclose this material information to consumers. When consumers experience the Drift Defect, the options for repair are slim. Reportedly, Sony PlayStation’s dedicated portal for issues with PS5 hardware—including the DualSense Controller—is experiencing a backlog and redirecting consumers to contact a customer service agent via the contact page for PlayStation support. Customers are experiencing long wait times and having to deal with a maze of pre-recorded phone prompts before finally speaking with an agent concerning repairs for DualSense Controller drift.<sup>7</sup>

8. Even for in-warranty repairs for Drift, customers have to pay for shipping the controller to a Sony repair center, and Sony does not reimburse customers for these shipping costs.<sup>8</sup>

9. Recent software and firmware updates did not ameliorate or address the Drift Defect in any way.

10. As a result of Sony’s unfair, deceptive, and/or fraudulent business practices, owners of DualSense Controllers, including Plaintiffs, have suffered an ascertainable loss, injury in fact, and otherwise have been harmed by Sony’s conduct.

11. Accordingly, Plaintiffs bring this action to redress Sony’s violations of state consumer fraud statutes, breach of warranty, and unjust enrichment. Plaintiffs seek monetary and other appropriate relief for damages suffered, declaratory relief, and public injunctive relief.

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<sup>6</sup> See, e.g., *Fix Xbox One controller stick drift*, NICK STURGESS (Jun. 23, 2020), <https://www.stugr.com/2020/06/23/fix-xbox-one-controller-stick-drift.html> (last visited May 5, 2021). *Switch owner with engineering background discovers Joy-Con drift design flaw*, NINTENDO ENTHUSIAST (Apr. 5, 2019), <https://www.nintendoenthusiast.com/switch-owner-with-engineering-background-discovers-joy-con-drift-design-flaw/>) (explaining that the Joy-Con drift issue is likely “due to Nintendo’s apparent poor choice of parts”); *Nintendo Switch, Stop obsolescence of controllers*, QUE CHOISIR (May 11, 2019), <https://www.quechoisir.org/action-ufc-que-choisir-nintendo-switch-stop-a-l-obsolescence-des-manettes-n72531/> (UFC-Que Choisir concludes that the “manufacturing defect” in Nintendo’s Joy-Cons is “aimed at deliberately reducing the life of the product to increase the replacement rate” and constitutes “planned obsolescence”).

<sup>7</sup> See Ari Nortis, *PS5 Controllers Are Drifting, And The Repairs Are A Hassle*, Kotaku (Feb. 9, 2021), available at: <https://kotaku.com/ps5-controllers-are-drifting-and-the-repairs-are-a-has-1846233739> (last visited May 5, 2021).

<sup>8</sup> See *id.*

## **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Sony is headquartered within this judicial district, transacts business in this district, and is subject to personal jurisdiction in this district. Additionally, Sony has advertised in this district and has received substantial revenue and profits from its sales of its products, including the DualSense Controllers, in this district; therefore, a substantial part of the events and/or omissions giving rise to the claims herein occurred, in part, within this district.

14. This Court has personal jurisdiction over Sony because Sony maintains its headquarters within this judicial district, has conducted substantial business in this judicial district, and intentionally and purposefully placed its products into the stream of commerce within the state of California and throughout the United States. Moreover, the Terms of Service and User Agreement prepared by Sony and entered into by Plaintiffs and the Class members specify “[a]ny dispute not subject to arbitration and not initiated in small claims court may be brought by either party in a court of competent jurisdiction in either the Superior Courts for the State of California in and for the County of San Mateo or in the United States District Court for the Northern District of California.”<sup>9</sup>

## **THE PARTIES**

### **Plaintiffs**

#### **Plaintiff L’marc Turner**

15. Plaintiff L’marc Turner is, and at all relevant times was, a resident and citizen of the Commonwealth of Virginia.

16. Plaintiff Turner purchased a PS5 console on or around February 5, 2021.

---

<sup>9</sup> <https://www.playstation.com/en-us/legal/psn-terms-of-service/> (last visited May 5, 2021).

1           17. On the same date as purchase, Plaintiff Turner's DualSense Controller that came with his  
2 PS5 system began exhibiting drift.

3           18. He contacted Sony customer service for assistance with the drift issue. The Sony  
4 representative advised Plaintiff Turner to reset his console and game, which may fix the problem. The  
5 representative did not offer any further assistance to Plaintiff Turner to address the issue.

6           19. Despite performing these troubleshooting steps, Plaintiff Turner's DualSense Controller  
7 continues to experience drift.

8           20. Given that his experience with contacting Sony the first time did not satisfactorily address  
9 the drift issue, Plaintiff Turner opted to instead purchase an additional DualSense Controller for \$69.99  
10 on February 9, 2021.

11           21. Had Plaintiff Turner been aware of the Drift Defect prior to purchasing his PS5, he  
12 otherwise would not have purchased the PS5, or would have paid substantially less for it.

13           22. When setting up his system, Plaintiff Turner agreed to the terms and conditions. Plaintiff  
14 Turner, however, expressed his intent to opt out—both individually and on behalf of all similarly situated  
15 persons—of resolving any disputes with Sony through individual arbitration pursuant to Section 14 of  
16 the PlayStation Terms of Service and User Agreement, which he indicated in a letter to Sony during the  
17 relevant window.

18           Plaintiff Rohit Burani

19           23. Plaintiff Rohit Burani is, and at all relevant times was, a resident of the state of Texas.

20           24. Plaintiff Burani purchased a PS5 console on or around February 21, 2021 at Walmart for  
21 the price of \$541 including tax.

22           25. A few days later, on or around February 25, 2021, Plaintiff Burani's DualSense Controller  
23 that came with his PS5 system began exhibiting drift. The drifting appeared randomly in games while  
24 controlling characters, and occurred without manual input.

25           26. Plaintiff Burani's controller continues to experience drift as of the date of this filing.

26           27. Had Plaintiff Burani been aware of the Drift Defect prior to purchasing his PS5, he  
27 otherwise would not have purchased the PS5, or would have paid substantially less for it.

1           28.       When setting up his system, Plaintiff Burani agreed to the terms and conditions. Plaintiff  
2 Burani, however, expressed his intent to opt out of resolving any disputes with Sony through individual  
3 arbitration pursuant to Section 14 of the PlayStation Terms of Service and User Agreement, which he  
4 indicated in a letter to Sony during the relevant window.

5           Plaintiff Enrique Avelar

6           29.       Plaintiff Enrique Avelar is, and at all relevant times was, a resident and citizen of the state  
7 of Connecticut.

8           30.       Plaintiff Avelar purchased a PS5 console on or around March 12, 2021 from Target for  
9 the price of \$531.25 including tax.

10          31.       The same day Plaintiff Avelar was setting his PS5 up, his DualSense Controller that came  
11 with his PS5 system began to show signs of drift. The characters on the screen would move, or drift,  
12 without manual input.

13          32.       Had Plaintiff Avelar been aware of the Drift Defect prior to purchasing his PS5, he  
14 otherwise would not have purchased the PS5, or would have paid substantially less for it.

15          33.       When setting up his system, Plaintiff Avelar agreed to the terms and conditions. Plaintiff  
16 Avelar, however, expressed his intent to opt out of resolving any disputes with Sony through individual  
17 arbitration pursuant to Section 14 of the PlayStation Terms of Service and User Agreement, which he  
18 indicated in a letter to Sony during the relevant window.

19           Plaintiff Christian Perez

20          34.       Plaintiff Christian Perez is, and at all relevant times was, a resident and citizen of the state  
21 of Ohio.

22          35.       Plaintiff Perez purchased a PS5 console on or around February 1, 2021 from Best Buy  
23 for the purchase price of \$431.00.

24          36.       About two weeks after Plaintiff Perez set up his PS5, Plaintiff Perez's DualSense  
25 Controller that came with his PS5 system began to show signs of drift.

26          37.       Had Plaintiff Perez been aware of the Drift Defect prior to purchasing his PS5, he  
27 otherwise would not have purchased the PS5, or would have paid substantially less for it.

1           38. When setting up his system, Plaintiff Perez agreed to the terms and conditions. Plaintiff,  
2 however, expressed his intent to opt out of resolving any disputes with Sony through individual  
3 arbitration pursuant to Section 14 of the PlayStation Terms of Service and User Agreement, which he  
4 indicated in a letter to Sony during the relevant window.

5           Plaintiff Stefan McShane

6           39. Plaintiff Stefan McShane is, and at all relevant times was, a resident of the state of New  
7 York.

8           40. On March 12, 2021, Plaintiff McShane purchased a new, unopened PS5 console on from  
9 a seller on Craig's List for the purchase price of \$600.

10          41. Plaintiff McShane set up his PS5 on March 12, 2021. Within the first two weeks of  
11 setting up his console, Plaintiff McShane's DualSense Controller that came with his PS5 system began  
12 to show signs of drift.

13          42. On March 27, 2021, Plaintiff McShane attempted to contact Sony on March 27, 2021,  
14 March 29, 2021, and April 1, 2021. On April 1, 2021, he was finally able to speak with a customer support  
15 representative. As his controller was exhibiting the drift issue, he would need to mail in his DualSense  
16 controller at his own cost of shipping in order for the controller to be replaced. He was further informed  
17 that he would need to wait 7-10 days plus some added time for shipping.

18          43. As the defective controller was Plaintiff McShane's only controller, he ended up  
19 purchasing a replacement DualSense controller for approximately \$71 from Amazon on April 6, 2021.

20          44. Plaintiff McShane mailed the defective controller to Sony for repair on April 30, 2021,  
21 which cost him \$12.17 in shipping costs.

22          45. Had Plaintiff McShane been aware of the Drift Defect prior to purchasing his PS5, he  
23 otherwise would not have purchased the PS5, or would have paid substantially less for it.

24          46. When setting up his system, Plaintiff McShane agreed to the terms and conditions.  
25 Plaintiff McShane, however, expressed his intent to opt out of resolving any disputes with Sony through  
26 individual arbitration pursuant to Section 14 of the PlayStation Terms of Service and User Agreement,  
27 which he indicated in a letter to Sony during the relevant window.

Plaintiff Michelle McGuckin

47. Plaintiff Michelle McGuckin is, and at all relevant times was, a resident and citizen of the state of Ohio.

48. Plaintiff McGuckin purchased a PS5 console on March 31, 2021 from Walmart.com for the purchase price of \$430.

49. About a week later, Plaintiff McGuckin set up her PS5. On or around April 4, 2021, Plaintiff McGuckin's DualSense Controller that came with her PS5 system began to show signs of drift.

50. Had Plaintiff McGuckin been aware of the Drift Defect prior to purchasing her PS5, she otherwise would not have purchased the PS5, or would have paid substantially less for it.

51. When setting up her system, Plaintiff McGuckin agreed to the terms and conditions. Plaintiff McGuckin, however, expressed her intent to opt out of resolving any disputes with Sony through individual arbitration pursuant to Section 14 of the PlayStation Terms of Service and User Agreement, which she indicated in a letter to Sony during the relevant window.

Defendant

52. Defendant Sony Interactive Entertainment LCC is responsible for the PlayStation brand and family of products and services. It is headquartered at 2207 Bridgepointe Parkway, San Mateo, California, 94404 and is a wholly-owned subsidiary of Sony Corporation and has global functions in California, London, and Tokyo.

FACTUAL ALLEGATIONSA. PS5/DualSense Controllers and Nature of the Defect

53. The PS5 is a video gaming system and console that was initially released by Sony in mid-November 2020. The launch of the PS5 was a highly anticipated event. In a YouTube promotional video released by Sony at the end of October 2020, Sony promoted the PS5 as having "no limits."<sup>10</sup> It was clear that Sony was advertising the PS5 as a top-of-the-line system, stressing the "power of a custom CPU, GPU and SSD with Integrated I/O that rewrite the rules of what a PlayStation console can do;" "marvel at incredible graphics and experience new PS5 features;" "enjoy faster and smoother frame rates in select

<sup>10</sup> See <https://www.playstation.com/en-us/ps5/> (last visited May 5, 2021).



[ ] games;” “discover a deeper gaming experience with support for haptic feedback, adaptive triggers and 3D Audio technology.”<sup>11</sup>

54. The PS5, which comes standard with one DualSense Controller, is depicted below. The DualSense Controller is the only controller that is fully compatible with the PS5 console.



55. Sony marketed the DualSense Controller as “push[ing] the boundaries of play” by offering a “deeper, highly immersive gaming experience,” due to the “innovative new PS5 controller[‘s]” haptic feedback and dynamic trigger effects.<sup>12</sup> An image of the front of the DualSense Controller is pictured below:

<sup>11</sup> See *id.*

<sup>12</sup> See <https://www.playstation.com/en-us/accessories/dualsense-wireless-controller/> (last visited May 5, 2021).





56. Below is an image of the DualSense Controller from the side:



57. Securing a PS5 console—particularly given the timing of the release right before the holidays—proved to be a “herculean task.”<sup>13</sup> Reports in early 2021 indicated that Sony had sold over four million PS5 units and showed “no signs of slowing down in 2021.”<sup>14</sup> The demand for the PS5 going into the 2020 holiday season was incredible, and the system quickly sold out everywhere.<sup>15</sup>

<sup>13</sup> See Brianna Reves, *PS5 Is ‘Biggest Console Launch Of All Time’ According to PlayStation CEO*, ScreenRant (Jan. 11, 2021), <https://screenrant.com/ps5-biggest-console-launch-all-time-playstation-ceo/> (last visited May 5, 2021).

<sup>14</sup> See Scott Baird, *PS5 Sells Over 4 Million United Since Launch & Shows No Signs Of Stopping*, ScreenRant (Jan. 3, 2021), <https://screenrant.com/ps5-sales-4-million-xbox-series-nintendo-switch/> (last visited May 5, 2021).

<sup>15</sup> See *id.*

58. The DualSense Controllers each contain two joysticks and several buttons that are used to control gameplay.

59. Sony heavily advertised the versatility and quality of the DualSense Controllers for gameplay as a main selling point of the PS5 system. For example, on its website, Sony makes the following representations about the DualSense Controllers<sup>16</sup>:

- “The DualSense Wireless Controller is the controller for PS5 including several next-generation features like haptic feedback and dynamic adaptive triggers;”
- “Discover a deeper, highly immersive gaming experience\* that brings the action to life in the palms of your hands;”
- “Enjoy a comfortable, evolved design with an iconic layout and enhanced sticks;”
- “Intuitively interact with select games using the integrated motion sensor.”

60. A new PS5 retails for approximately \$499.99 and includes one DualSense controller (as depicted above).

61. Standalone DualSense Controllers can be purchased for \$69.99 each.

62. The DualSense Controllers are defective. Specifically, the joysticks on the DualSense Controllers suffer from a defect that results in the joysticks “drifting” on their own. This affects gameplay such that the characters or action on the screen move as if there has been some movement of the joystick by a gamer, even though there has not.

63. Drifting significantly interferes with gameplay. Since the entire purpose of the PS5 is to play video games and the purpose of the DualSense Controller specifically is to control the gameplay in those video games, the Drift Defect affects the device’s central functionality.

64. The cause of drifting is reported to be a common design defect with the analog joystick used in the DualSense Controller and past controllers, such as the Xbox One and the DualShock 4

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<sup>16</sup> <https://direct.playstation.com/en-us/accessories/accessory/dualsense-wireless-ps5-controller.3005715?smcid=pdc:us-en:web-pdc-accessories-dualsense-wireless-controller:buttonblock-buy-now> (last visited May 5, 2021).

1 controllers that came with the PlayStation 4 console.<sup>17</sup> The “common denominator” at the base of the  
 2 “drift” of the analog joystick is reportedly the “quality of the unit used.”<sup>18</sup> As one report explains:

3 No [joy]stick is built specifically for a console controller – these are units that have been  
 4 on the market for years; that’s why the problem is common to different consoles spanning  
 5 multiple generations. To demonstrate this, the iFixit teardown, for example, showed that  
 6 the DualSense levers are the same as those used for the DualShock 4. The idea is to save  
 on the construction of each controller, despite the problems that are then caused to the  
 players.<sup>19</sup>

7 65. Thus, the problem is destined to repeat itself as long as Sony uses the same unit which  
 8 deteriorates over time and registers contacts which did not, in actuality, take place (i.e. drifting).  
 9

#### 10 **B. Technical Nature of the Defect**

11 66. The design and selection of materials in the joystick are the cause of the Drift Defect.

12 67. The joystick used in the PS5 was manufactured by AlpsAlpine, a Japanese company who  
 13 makes a variety of electro-mechanical input sensors for consumer electronics. The joystick model is the  
 14 Thumb Pointer (Stick Controllers) RKJXV122400R, which includes a button in the z-axis. This button  
 15 allows the joystick lever to be depressed as well as move in the x and y direction to add another input  
 16 mode during use. The joystick’s converts x and y directional input into an electrical signal that is  
 17 interpreted by the controller. It does this through the use of two potentiometers.

18 68. The potentiometer is a very common electrical component that is used to control the flow  
 19 of electrical current. Each potentiometer consists of a curved, resistive track and a contact arm.

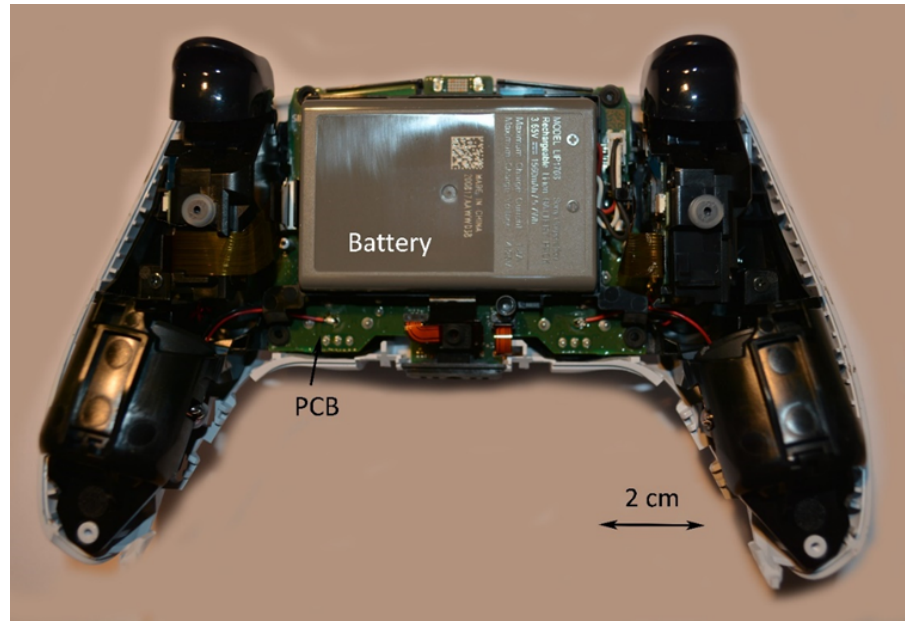
20 69. Each joystick consists of sheet steel frame that contains lubricated polyethylene gimbals  
 21 that connect to the x and y directional potentiometers. The gimbals convert the up/down (y direction)  
 22 and right/left (x direction) motion to rotational motion. The rotational motion is required for the  
 23 potentiometer to regulate the input signal via the wiper.

24  
 25 <sup>17</sup> *The PS5’s DualSense also suffers from the “drift” of the sticks: because so many pads have the*  
 26 *same problem*, ITALY24NEWS (Feb. 10, 2021), [https://www.italy24news.com/en/2021/02/the-ps5s-](https://www.italy24news.com/en/2021/02/the-ps5s-dualsense-also-suffers-from-the-drift-of-the-sticks-because-so-many-pads-have-the-same-problem.html)  
 27 [dualsense-also-suffers-from-the-drift-of-the-sticks-because-so-many-pads-have-the-same-problem.](https://www.italy24news.com/en/2021/02/the-ps5s-dualsense-also-suffers-from-the-drift-of-the-sticks-because-so-many-pads-have-the-same-problem.html)  
 28 [html](https://www.italy24news.com/en/2021/02/the-ps5s-dualsense-also-suffers-from-the-drift-of-the-sticks-because-so-many-pads-have-the-same-problem.html) (last visited May 5, 2021).

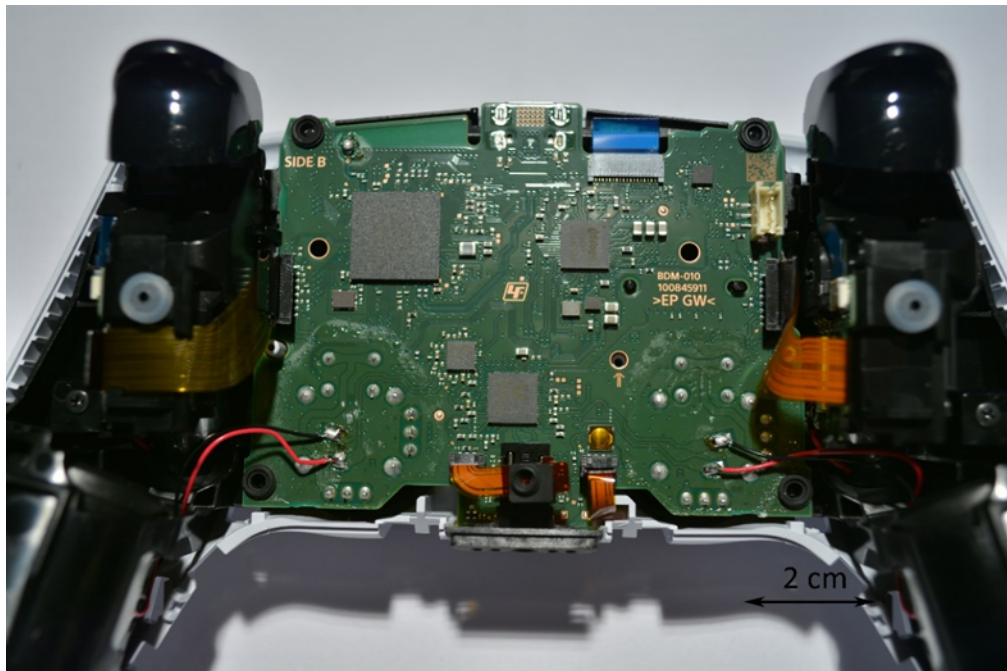
<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

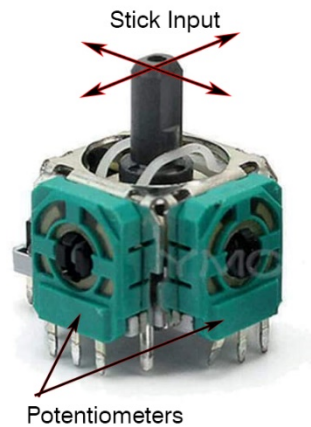
70. Below is an image of the top case of the controller, illustrating all internal components.



71. The image below indicates the top case of controller with the battery and battery holder removed, with red and black wires located behind the locations of the joysticks. Each joystick is soldered to the control board with through-hole pins.

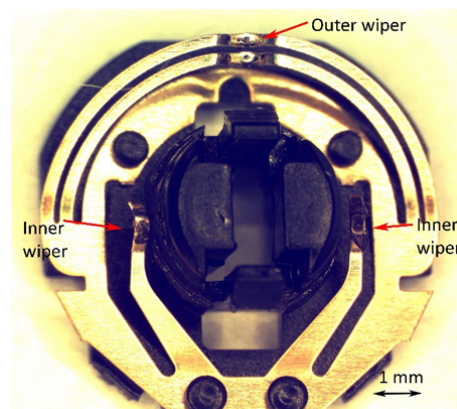
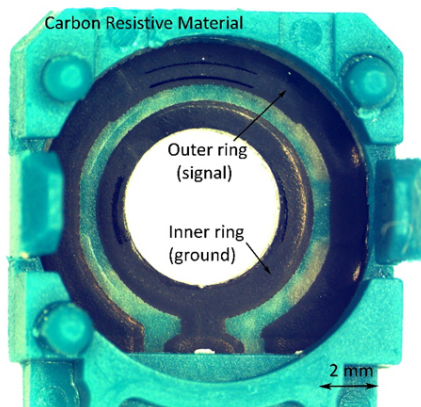


72. The picture below shows the AlpsAlpine joystick model that is used in the PS5 controller.



73. A potentiometer is connected to each joystick's shaft, as well as the controller's circuit board. It works as an electrical circuit to send signals to the joystick to render movements on the screen. A wiper brushes against the potentiometer's carbon rings depending on the inputs from the joystick, which causes the joystick to move on the screen.

74. The figure below on the left illustrates the potentiometer of a joystick. The outer and inner rings are made from a soft, carbon material that has a low friction coefficient that is designed for a finite number of sliding cycles before failure. The figure on the right illustrates the brush tips from the wiper that make contact to the potentiometer to translate movement to the joystick.

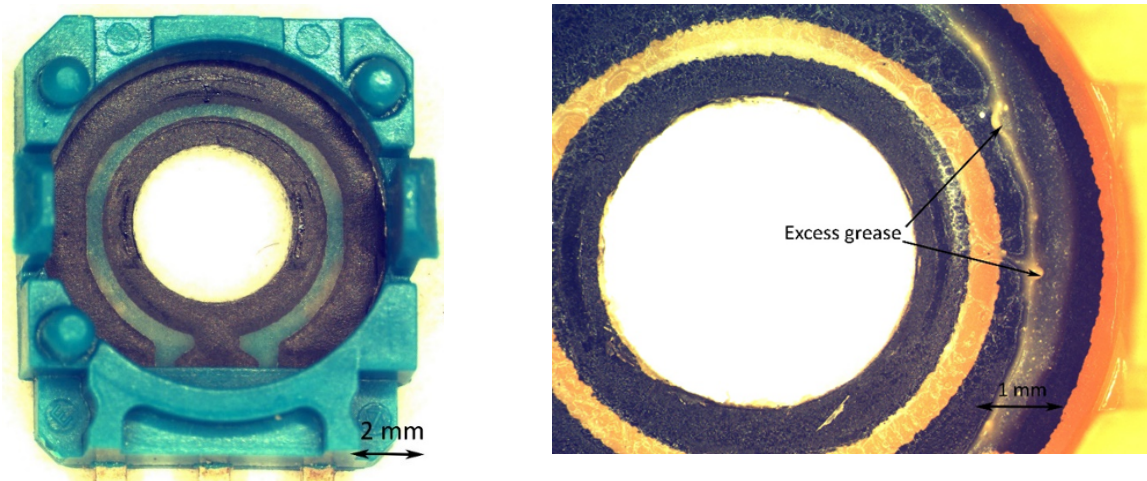


75. In the DualSense Controllers, the joysticks contain a design flaw. In an effort to reduce the wear of the carbon film by the steel wipers, a grease-like lubrication is applied to the internal



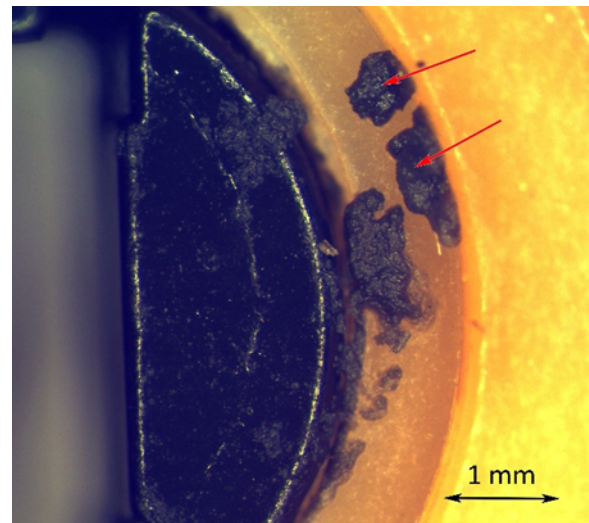
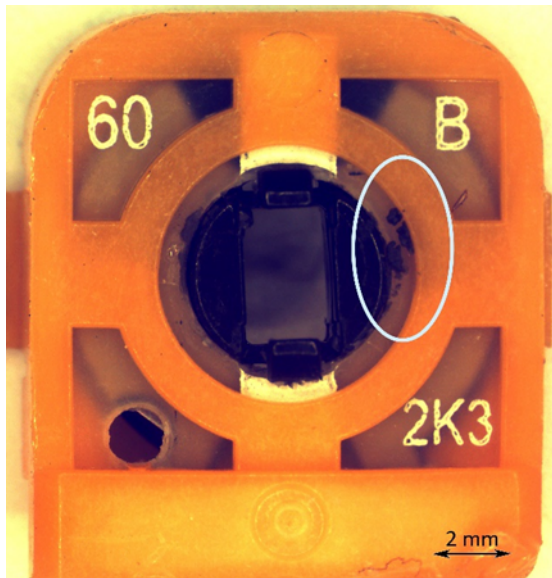
components of the joystick. This grease breaks down and loses viscosity over time, and thus adheres to the wear particles caused by wipers brushing against the carbon material.

76. In the DualSense Controllers, the potentiometers appear to be either green or orange in color. The figure below on the left illustrates a green potentiometer with a small amount of grease transferred to the surface where the wipers travel. On the right is an orange potentiometer with an applied layer of grease covering the surface. An examination of controllers experiencing the Drift Defect revealed that each potentiometer contained some amount of grease.



77. The grease had the potential to migrate to the potentiometer. The steel wipers plow the grease layer aside and create a small boundary film, which over time breaks down the carbon matrix and wear particles are released. As the two materials slide against one another repeatedly over time, particles transfer to the wiper and form a thin coating over the wipers. Particles generated by the sliding wipers over the potentiometer alter the conductive behavior of the joystick.

78. The wear debris migrated from the contact area to outside of the potentiometer housing. The images below show wear debris on the outside surface of the potentiometer (left) comprised of grease and carbon particles (right).



79. This material breakdown directly correlates to the degradation of the joystick's performance. The wipers sliding over the potentiometer cause particles of carbon to be removed. These particles mix with the grease and form a thin coating over the wipers. The grease thus changes the contact resistance between the wiper and the resistive surface, resulting in a current value that differs from what the circuitry expects, and thus a misinterpretation of the joystick's input. As more material wears off and adheres to the wipers, it alters the resistive properties of the potentiometer. This alters the potentiometer's calibrated voltage and will cause the joystick to register phantom input or joystick drift, interfering with accurate gameplay.

80. The below image demonstrates the wear tracks caused from sliding wipers. The wipers plow through the grease in almost a "snow plow-like" fashion, and transfer grease between the wiper and the carbon track.



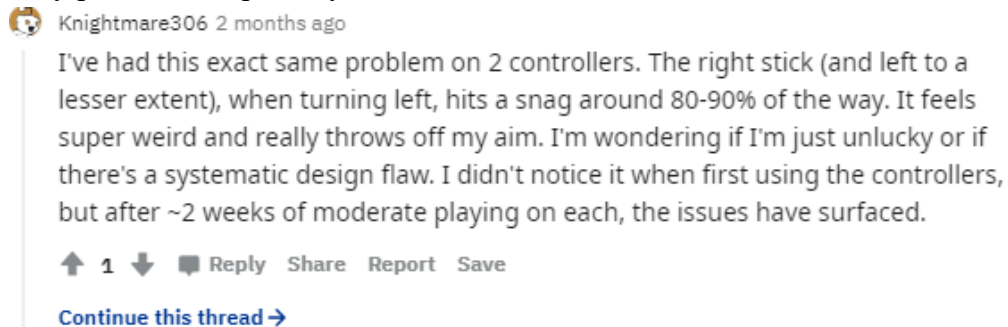
81. While variations in manufacturing may equate to some potentiometers lasting longer than others, all potentiometers are destined to fail given the design defect. Further, the plastic components within the joystick will deform over time which will prevent the joystick from returning to its zero point.

82. Accordingly, all DualSense Controllers are likely to fail under foreseeable and reasonable use as degradation of the joystick performance over time is caused by material breakdown.

### C. Customer Complaints

83. Plaintiffs' experiences with the drifting phenomenon are by no means isolated or outlying occurrences. Indeed, the internet is replete with examples of message boards and other websites where consumers have complained of the exact same Drift Defect.

84. Some consumers report experiencing drift on multiple DualSense Controllers, including controllers they purchased separately from their PS5:



20

85. Scores of DualSense Controller owners have publicly complained about the Defect and drift. Since the PS5 was released in November of 2020, players have taken to social media to gripe about their experiences with DualSense drift. Users report experiencing drift on the DualSense Controller that came with the PS5 right out of the box, such as Plaintiffs, or within only several days of use:

---

20

[https://www.reddit.com/r/PS5/comments/jzkqf7/in\\_case\\_you\\_didnt\\_know\\_the\\_dualsense\\_is\\_in\\_fact/](https://www.reddit.com/r/PS5/comments/jzkqf7/in_case_you_didnt_know_the_dualsense_is_in_fact/)  
(last visited May 5, 2021).





SuaveSimz 2 months ago

My left analog stick has stick drift straight out of the box. Whenever I push up it starts moving left by itself.

8   Reply   Share   Report   Save

21



ZoltanFreaknik 2 months ago

The one that came with my ps5 got really bad stick drift on the left one after 3 days. Wasn't just in game but in home screen too. Called sony and they said I had to ship it in so they could check it and maybe repair it but I'd have to pay for shipping and the whole process could take up to a month. Hell naw.

Called walmart (that's where I got it from) and they said I'd have to return ps5 too since it came as a package. Hell naw.

I went and bought a new one put the dud in the box and returned it. This shit was hard enough to get I'm not going another month because I got a dud. Sony should have sent a replacement and told me to ship the dud to them but whatever.

23   Reply   Share   Report   Save

22



Posted by u/plasm0dium 3 months ago

## 5 Lots of complaints on controller drift

Help & Tech Support

One of my ps5 controllers has bad drifting out of the box. Drifts on Cyberpunk (like many others have noticed) and when I switch to my 2nd controller it goes away. Also on Overwatch. This is from the Costco bundle.

How should I swap this controller? Thru Costco or thru Sony? Anyone had to get an exchange yet on the ps5

20 Comments   Share   Save   Hide   Report

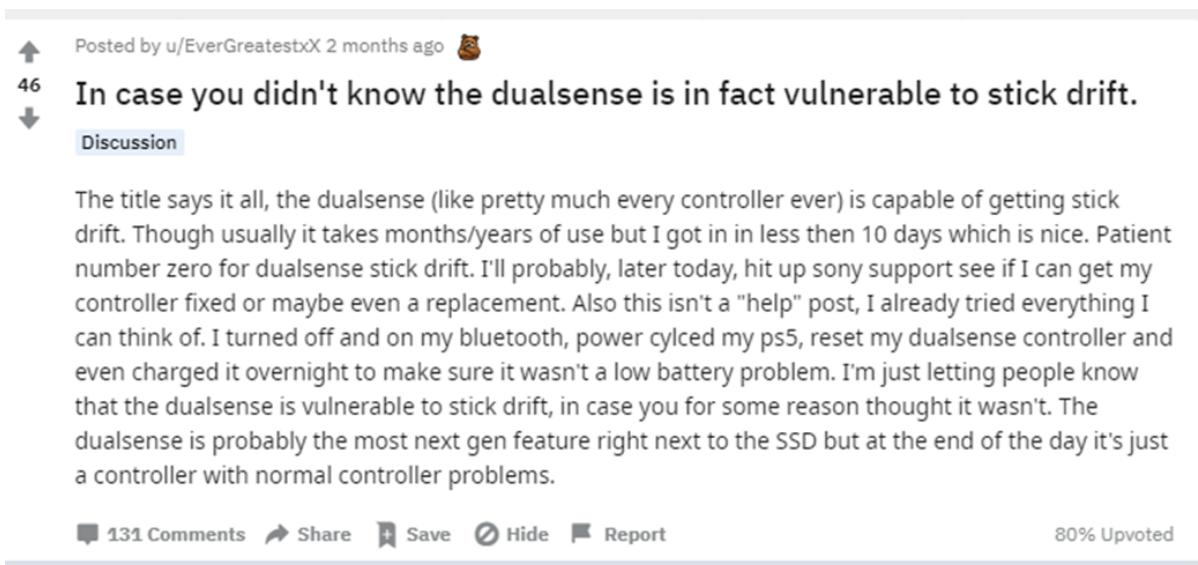
67% Upvoted 23

86. Another Reddit user reported experiencing the issue only 10 days after receiving their PS5, stating they tried every possible fix—power-cycling the console, turning Bluetooth on and off, resetting the controller, and, finally, charging it fully overnight—to no avail.

<sup>21</sup> [https://www.reddit.com/r/PS5/comments/jvw04p/my\\_dualsenses\\_right\\_stick\\_starts\\_drifting/](https://www.reddit.com/r/PS5/comments/jvw04p/my_dualsenses_right_stick_starts_drifting/) (last visited May 5, 2021).

<sup>22</sup> See [https://www.reddit.com/r/PS5/comments/kb8cb6/anyone\\_else\\_experiencing\\_dualsense\\_stick\\_drift/](https://www.reddit.com/r/PS5/comments/kb8cb6/anyone_else_experiencing_dualsense_stick_drift/) (last visited May 5, 2021).

<sup>23</sup> See [https://www.reddit.com/r/PS5/comments/kc13t4/lots\\_of\\_complaints\\_on\\_controller\\_drift/](https://www.reddit.com/r/PS5/comments/kc13t4/lots_of_complaints_on_controller_drift/) (last visited May 5, 2021)



24

87. The following are additional examples of the complaints submitted on forums and social media websites by DualSense Controller owners (which upon information and belief are monitored by Sony). Below is just a sampling of the many complaints.<sup>25</sup>



26

<sup>24</sup> See [https://www.reddit.com/r/PS5/comments/jzkqf7/in\\_case\\_you\\_didnt\\_know\\_the\\_dualsense\\_is\\_in\\_fact/](https://www.reddit.com/r/PS5/comments/jzkqf7/in_case_you_didnt_know_the_dualsense_is_in_fact/) (last visited May 5, 2021).

<sup>25</sup> The following complaints are reproduced as they appear online. Any typographical errors are attributable to the original author.

<sup>26</sup> <https://twitter.com/Nalverus/status/1357612378830077952> (last visited May 5, 2021).



bladerunner2442 1 month ago

I played through Spiderman and Watchdogs with no issue. Started playing NBA 2k21 and the controller freaked out. It started with drift in right analog & the haptics was making a loud clicking noise. I called Sony and they had me reset the PS5 to default settings and it cleared up magically. Next day the drift on the controller started on the left analog. Messed with it, unplugged it, reset to default and was working. Next day drift on left analog again, I called Sony 3 diff times and nothing fixed it so sending it in to them for repair. Today?! The drift switched back to the right analog. How can it be hardware? If it was why would the drift switch from one analog to another? I'm so frustrated.

27



feral1975 Yesterday, 7:15am

#21

Yes, got a brand new PS5 and a spare Dual Sense from Amazon Warehouse at the start of the month, one of the controllers had intermittent drifting in the right stick and more rarely in the left...so it went back to Amazon and I bought a replacement. I'm completely sure it was the warehouse one that had the issue, good thing too otherwise I'd have been stuck with almost as bad an issue as I had with my PS4, one controller had drift with R2 and any controllers still to this day disconnect from the PS4 for no reason and won't reconnect without a full reboot, I've lost many hours of unsaved gameplay over the years.

28



Chaosbros 1 day ago

I had it after about a week of getting my PS5, it got worse and worse so I sent it back to Sony. They sent me a replacement, although I'm pretty sure it's a refurbished unit.

29

#### **D. Sony Had Knowledge of the Defect**

88. Sony is aware of the DualSense Defect. In the first place, Sony controls the manufacture, development, marketing, sales, and support for the PS5 and DualSense Controllers. Accordingly, Sony was responsible for performing pre-release testing on the PS5 and DualSense Controllers which should

<sup>27</sup> [https://www.reddit.com/r/PS5/comments/kb2sql/ps5\\_dual\\_shock\\_controller\\_stick\\_drift/](https://www.reddit.com/r/PS5/comments/kb2sql/ps5_dual_shock_controller_stick_drift/) (last visited May 5, 2021).

<sup>28</sup> [https://www.pushsquare.com/news/2021/02/poll\\_have\\_you\\_been\\_experiencing\\_drift\\_on\\_your\\_dualsense\\_ps5\\_controller](https://www.pushsquare.com/news/2021/02/poll_have_you_been_experiencing_drift_on_your_dualsense_ps5_controller) (last visited May 5, 2021).

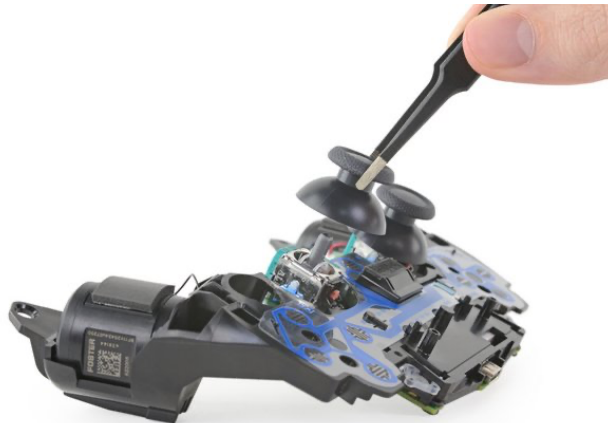
<sup>29</sup> [https://www.reddit.com/r/PS5/comments/k1bhzh/dualsense\\_drift/](https://www.reddit.com/r/PS5/comments/k1bhzh/dualsense_drift/) (last visited May 5, 2021).

1 have alerted it to the Defect.

2 89. Additionally, the DualSense Controller's predecessor, the DualShock 4 wireless controller  
3 that came with the PlayStation 4—released in November of 2013—also experienced drift. By mid-2014,  
4 users reported that their PlayStation 4 controllers would drift on its own instead of where the user directed  
5 it to go.<sup>30</sup> Yet, despite being aware of joystick drift in the DualShock 4, Sony equipped the DualSense 5  
6 with virtually the same analog components. A recent teardown of the PS5 and DualSense Controller by  
7 iFixit revealed that the two joysticks in the DualSense Controller were “basically identical to the Alps-  
8 brand sticks from the DualShock 4,” and indicating that the joysticks were still “prone to drift.”<sup>31</sup>

9 90. The iFixit teardown revealed that the DualSense Controllers were all but destined to fail,  
10 contemplating whether the sensors and parts used in a controller used as a “willful cost-saving calculation  
11 on the consoles makers’ part to not offer more reliable, or replaceable, sticks.”<sup>32</sup>

12 91. The image below demonstrates the inside of the deconstructed DualSense Controller with  
13 the researcher holding one of the two joysticks with a pair of tweezers.”



23 <sup>30</sup> See [https://www.amazon.com/DualShock-Wireless-Controller-PlayStation-Black-4/product-](https://www.amazon.com/DualShock-Wireless-Controller-PlayStation-Black-4/product-reviews/B00BGA9X9W/ref=cm_cr_ar_p_d_viewopt_kywd?pageNumber=1&filterByKeyword=drift)  
24 [reviews/B00BGA9X9W/ref=cm\\_cr\\_ar\\_p\\_d\\_viewopt\\_kywd?pageNumber=1&filterByKeyword=drift](https://www.amazon.com/DualShock-Wireless-Controller-PlayStation-Black-4/product-reviews/B00BGA9X9W/ref=cm_cr_ar_p_d_viewopt_kywd?pageNumber=1&filterByKeyword=drift)  
25 (user complains of “the character on screen slowly drift down without me touching the right analog  
26 stick” and reports contacting Sony about the issue) (last visited May 5, 2021);  
27 [https://www.reddit.com/r/PS4/comments/2rvyie/dualshock\\_4\\_analog\\_stick\\_drifting/](https://www.reddit.com/r/PS4/comments/2rvyie/dualshock_4_analog_stick_drifting/) (reporting left  
28 analog drifting on a DualShock 4 controller that was about a year old) (last visited Feb. 10, 2021);

<sup>31</sup> See Kevin Purdy, *Here's Why PS5 Joysticks Drift (and Why They'll Only Get Worse)*, iFixit (Feb.  
17, 2021), [https://www.ifixit.com/News/48944/heres-why-ps5-joysticks-drift-and-why-theyll-only-](https://www.ifixit.com/News/48944/heres-why-ps5-joysticks-drift-and-why-theyll-only-get-worse)  
get-worse (last visited May 5, 2021).

<sup>32</sup> See *id.*

1           92. Further, Sony has received droves of complaints about this issue both directly from  
2 consumers and through online forums and social media sites that it monitors. Not only that, Sony is well-  
3 aware that the drift phenomena have been plaguing the gaming community for years, with reports  
4 indicating that similar controllers from other well-known manufacturers had also been experiencing the  
5 drifting defect, as well as the prior model of the PlayStation 4 controller, the DualShock 4. Despite this  
6 knowledge, Sony has done nothing to modify the materials or design of the DualSense Controllers or  
7 otherwise respond to or correct drift.

8           93. Sony is well aware this type of defect would be material to its customers. In a recent patent  
9 application relating to reducing small amounts of lag in DualSense Controllers, Sony acknowledged:  
10 “with the growing sophistication of computer simulations such as computer games, players have become  
11 increasingly demanding of performance, one index of which is latency between gamer input and the  
12 resulting action on screen.”<sup>33</sup> Drifting, where the action on the screen does not follow the gamer input at  
13 all, interferes with gameplay significantly more than small amounts of lag.

14           94. It has been reported that, as of January 3, 2021, there have been over 4 million PS5 units  
15 sold since the PS5 launched in November of 2020 (not even counting additional DualSense Controllers  
16 purchased separately).<sup>34</sup> Clearly, Sony would not be selling a product with such volume without first  
17 conducting extensive presale tests (such as failure analysis, stress tests, pressure tests, and friction tests)—  
18 especially in light of the public backlash for drifting in its competitors’ products—before bring the PS5  
19 to market.

20           95. As already noted, Sony touted the DualSense Controller’s design as being highly  
21 innovative and contributing to the overall enhanced gaming experience of the PS5.

22           96. The PS5 was first released in November 2020 and is still on the market today.

23           97. Despite knowing about the Drift Defect, Sony continues to market and sell the PS5 and  
24 DualSense Controllers without disclosing the defect.

25 \_\_\_\_\_  
26 <sup>33</sup> See <https://pdfaiw.uspto.gov/.aiw?Docid=20210031100> (last visited May 5, 2021).

27 <sup>34</sup> See Scott Baird, *PS5 Sells Over 4 Million United Since Launch & Shows No Signs Of Stopping*,  
28 SCREENRANT (Jan. 3, 2021), <https://screenrant.com/ps5-sales-4-million-xbox-series-nintendo-switch/>  
(last visited May 5, 2021).

1           98.     The latest DualSense update, 0210, did not address the Defect. Nor did the latest PS5  
2 firmware update. There is no indication that Sony has anything in progress to fix or otherwise address the  
3 Drift Defect, and it has not spoken publicly about any plans to do so.

4           99.     Sony could easily disclose the Defect to potential consumers in any number of ways,  
5 including on the product's packaging, in the user manual, on its website, or on its set-up screen. It does  
6 not do so and instead conceals the Defect from consumers.

7           100.    The options for consumers to fix a broke DualSense Controller with drift are slim:  
8 consumers can either go through Sony's PlayStation page, which has a dedicated portal for issues with  
9 PS5 hardware, for troubleshooting, or incur the out-of-pocket shipping cost of mailing the DualSense  
10 Controller to Sony for repairs. Consumers who mail their DualSense Controllers to Sony are then left  
11 without the use of their DualSense Controller for an upward of several weeks depending upon the  
12 consumer's location and the severity of the issue.<sup>35</sup>

13           101.    As one reporter noted, "the consensus is that the issue is one internal to the PS5 controller  
14 hardware and isn't easily solved by swapping games, downloading a patch, or uninstalling something  
15 already downloaded."<sup>36</sup>

16           102.    Should a problem occur with a controller, it's extremely difficult to repair the joysticks  
17 without soldering gear, which means that "quick fixes" are out of the question for the average consumer.<sup>37</sup>  
18 Consumers also run the risk of voiding the warranty if they attempt one of the "homebrewed" fix  
19 themselves.<sup>38</sup>

20 \_\_\_\_\_  
21 <sup>35</sup> See Phillip Martinez, *PS5 DualSense Controller Experiencing Its Own 'Joy-Con Drift,'* NEWSWEEK  
22 (Feb. 10, 2021), <https://www.newsweek.com/ps5-drift-joy-con-issue-how-fix-playstation-support-dualsense-controller-1568265#:~:text=Unfortunately%2C%20gamers%20will%20have%20to,the%20severity%20of%20the%20issue> (last visited May 5, 2021).

23 <sup>36</sup> See Rebekah Valentine, *PS5 DualSense Controller Drift: Everything You Need to Know*, IGN (Mar.  
24 2, 2021), <https://www.ign.com/articles/ps5-dualsense-controller-drift-everything-you-need-to-know>  
(last visited May 5, 2021).

25 <sup>37</sup> See Adam Vjestica, *PS5 drift problem might be inevitable – here's why*, TECHRADAR, <https://www.techradar.com/news/ps5-stick-drift-might-be-inevitable-according-to-this-comprehensive-teardown>  
26 (last visited May 5, 2021).

27 <sup>38</sup> See Paul Tassi, *Experts Say PS5 Joystick Drift Is Getting Bad, And It'll Get Much Worse From*  
28 *Here*, FORBES (Feb. 21, 2021), <https://www.forbes.com/sites/paultassi/2021/02/21/experts-say-ps5-joystick-drift-is-getting-bad-and-itll-get-much-worse-from-here/?sh=536aa6943f96> (last visited May 5, 2021).



103. Moreover, the DualSense Controller is the only controller that is fully compatible with the PS5 console. Thus, users experiencing drift are forced to either play with a defective controller or be without their DualSense Controller for weeks on end while awaiting repairs (or incur the out-of-pocket cost of purchasing a replacement DualSense Controller).

104. Users express frustration at the significant wait times to speak with an agent from Sony Support, and having to run through a maze of prompts and pre-recorded messages before speaking with a live operator. One user lamented that Sony Support was “an Infinite Loop” ping-ponging him back and forth between the website and phone support team specialists, while offering no real solutions:

Posted by u/EzE408 1 month ago

**Sony Support is an Infinite Loop.**

Help & Tech Support

The controller, that came with the PS5, has developed severe drift. My character ticks while moving, randomly and repeated swings left to 180 degrees, and will jerk left as well. This happens every 5 seconds or less. It's unusable.

My experience with Sony Support. I completed troubleshooting. I did all that was asked in their tutorial. It prompts me, eventually, to call Sony at 1-800-345-7669. I call the number. After indicating to the automated system that it's a hardware issue, it prompts me to go to Sony website for the tutorial. Rinse. Repeat.

I then contacted a live support agent who answered in less than a minute. I conveyed my issue as follows (apologize for grammar etc. as it was typed on mobile):

**ACTUAL CHAT BELOW**

Tania: Thank you for contacting PlayStation, my name is Tania how may I assist you today?Remember: Please do not refresh your screen as it will disconnect the chat session. Thanks!

Me:Yes, I have 1 controller that came with my ps5. The controller has developed severe drift and all troubleshooting has not fixed it

Me:The left thumb stick will slowly or

Me:aggressively turn me left. Sometimes a full 180 degrees.

Tania:Hi XXXXXXXX, I am sorry to know you are experiencing issues with the analog stick of your PS5 Dualsense.

Tania:In order to get this resolved you can visit our website <https://www.playstation.com/en-us/support/> or you can also get in touch with our Phone Support team specialists. Find below their information: 1-800-345-7669. The hours of operation are Monday through Friday from 9AM - 6PM PST. We are Closed Saturdays and Sundays. Rest assured you will be assisted by one of our experts in regards to this matter. Please let me know if you have any additional question I can assist you with?

Me:No. That number directs me here.

Me:It says to go to support and that they are not taking calls. This is an infinite loop.

Tania:I understand this is important for you and I would like to help you but all our PS5 specialists are assisting through phone support. Please try to contact them later.

Tania:Thank you for contacting PlayStation. Have a wonderful day, stay safe!

**\*\*The agent then ended the transcript and closed out**

39

<sup>39</sup> See [https://www.reddit.com/r/PS5/comments/kqdmzc/sony\\_support\\_is\\_an\\_infinite\\_loop/](https://www.reddit.com/r/PS5/comments/kqdmzc/sony_support_is_an_infinite_loop/) (last visited May 5, 2021).



105. There is no indication, however, that Sony has developed an actual fix for the drift problem; rather, it appears to simply perform some sort of minor refurbishment and send the DualSense Controller back to consumers still defective and susceptible to manifestation of the Drift Defect in the future. Nor is there any indication that Sony is extending the warranty, compensating consumers for various past expenses or damages, or notifying consumers about their secret repair program. One user reported his experience with sending in his brand-new controller for drift and receiving a refurbished one in exchange.



106. Indeed, public complaints posted online already show several reports of consumers experiencing drift again after receiving refurbished or replacement DualSense Controllers back from Sony.

<sup>40</sup> <https://twitter.com/chompa40873840/status/1359864337956040712> (last visited May 5, 2021).

<sup>41</sup> [https://www.reddit.com/r/PS5/comments/kb2sql/ps5\\_dual\\_shock\\_controller\\_stick\\_drift/](https://www.reddit.com/r/PS5/comments/kb2sql/ps5_dual_shock_controller_stick_drift/) (last visited May 5, 2021).





King\_Bee91 1 month ago

And here we go again, I've got another stick drift now on the right one. After i got a replacement with the new dualsense, the old one had the drift on the left stick. FFS sony, do they even try to fix this problem?

↑ 1 ↓ Reply Share Report Save

42

107. Because of Sony's actions, DualSense Controller owners have suffered damages in the form of loss of use, failure of the PS5 and DualSense Controller's core functionality, loss of the benefit of their bargain, diminution of value of and overpayment for their PS5 and DualSense Controllers, and lost time and expense involved in contacting Sony and retailers about the problem and waiting for replacements and/or repairs.

108. Based upon the allegations in this lawsuit and scores of internet complaints online about drifting in prior models of the DualShock Controller, Sony cannot dispute that it had presale knowledge of the Drifting Defect in the DualSense Controller.

### **CLASS ACTION ALLEGATIONS**

109. This action is brought, and may properly proceed, as a class action, pursuant to Rule 23(a) and 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. Plaintiffs seek certification of a Class defined as follows ("Nationwide Class"):

#### **Nationwide Class:**

All persons in the United States who bought a PS5 or stand-alone DualSense Controller.

In addition, or in the alternative, Plaintiffs seek certification of the following State Classes:

#### **Connecticut Class:**

All persons who bought a PS5 or stand-alone DualSense Controller in the state of Connecticut.

<sup>42</sup> [https://www.reddit.com/r/PS5/comments/kb8cb6/anyone\\_else\\_experiencing\\_dualsense\\_stick\\_drift/](https://www.reddit.com/r/PS5/comments/kb8cb6/anyone_else_experiencing_dualsense_stick_drift/) (last visited May 5, 2021).

**New York Class:**

All persons who bought a PS5 or stand-alone DualSense Controller in the state of New York.

**Ohio Class:**

All persons who bought a PS5 or stand-alone DualSense Controller in the state of Ohio.

**Texas Class:**

All persons who bought a PS5 or stand-alone DualSense Controller in the state of Texas.

**Virginia Class:**

All persons who bought a PS5 or stand-alone DualSense Controller in the Commonwealth of Virginia.

110. Excluded from the Classes is Sony, its affiliates, employees, officers and directors, persons or entities that purchased the PS5 or DualSense Controllers for resale, and the Judge(s) assigned to this case. Plaintiffs reserve the right to modify, change, or expand the class definitions if discovery and/or further investigation reveal that they should be expanded or otherwise modified.

111. **Numerosity:** The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class is unknown at this time, such information being in the sole possession of Sony and obtainable by Plaintiffs only through the discovery process, Plaintiffs believe, and on that basis allege, that at least hundreds of thousands of DualSense controllers have been sold nationwide. The PS5 has sold nearly 4 million units since its release in November 2020. Moreover, counsel for Plaintiffs have received over 505 intakes from similarly-situated users experiencing drifting issues with their DualSense Controller(s). Many of these intakes indicated that they have or will opt-out of Sony's arbitration agreement.

112. **Existence/Predominance of Common Questions of Fact and Law:** Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions

1 affecting individual Class members. These common legal and factual questions include, but are not  
 2 limited to:

- 3 a. whether Sony engaged in the conduct alleged herein;
- 4 b. whether the DualSense Controllers are defective;
- 5 c. whether Sony placed the PS5 and DualSense Controllers into the stream of  
 6 commerce in the United States with knowledge of the Defect;
- 7 d. whether Sony knew or should have known of the Defect, and if so, how long it  
 8 knew of this Defect;
- 9 e. when Sony became aware of the Defect;
- 10 f. whether Sony knowingly failed to disclose the existence and cause of the Defect;
- 11 g. whether Sony's conduct alleged herein violates consumer protection statutes,  
 12 false advertising laws, warranty laws, and other laws as asserted herein;
- 13 h. whether Plaintiffs and Class Members overpaid for their PS5 and/or DualSense  
 14 Controllers in light of the Defect;
- 15 i. whether Plaintiffs and Class Members have suffered an ascertainable loss as a  
 16 result of the loss of their DualSense Controller's functionality;
- 17 j. whether Plaintiffs and Class Members are entitled to damages, including punitive  
 18 damages, as a result of Sony's conduct alleged herein, and if so, the amount or proper measure of those  
 19 damages; and
- 20 k. whether Plaintiffs and Class Members are entitled to equitable relief, including  
 21 but not limited to restitution and/or injunctive relief, including public injunctive relief, and other state  
 22 laws asserted herein.

23 113. **Typicality:** Plaintiffs' claims are typical of the claims of the Class since Plaintiffs  
 24 purchased a PS5 and/or DualSense Controllers, as did each member of the Class. Plaintiffs and Class  
 25 members were injured in the same manner by Sony's uniform course of conduct alleged herein. Plaintiffs  
 26 and all Class members have the same claims against Sony relating to the conduct alleged herein, and the  
 27 same events giving rise to Plaintiffs' claims for relief are identical to those giving rise to the claims of all  
 28 Class Members. Plaintiffs and all Class members sustained monetary and economic injuries including,

1 but not limited to, ascertainable losses arising out of Sony's wrongful conduct in selling and failing to  
 2 remedy defective DualSense Controllers. Plaintiffs are advancing the same claims and legal theories on  
 3 behalf of himself and all absent Class Members.

4 114. **Adequacy**: Plaintiffs are adequate representatives for the Class because his interests do  
 5 not conflict with the interests of the Class that he seeks to represent. Plaintiffs have retained counsel  
 6 competent and highly experienced in complex class action litigation—including consumer fraud class  
 7 action cases—and they intend to prosecute this action vigorously. The interests of the Class will be fairly  
 8 and adequately protected by Plaintiffs and their counsel.

9 115. **Superiority**: A class action is superior to all other available means of fair and efficient  
 10 adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual  
 11 Class member is relatively small in comparison to the burden and expense of individual prosecution of  
 12 the complex and extensive litigation necessitated by Sony's conduct. It would be virtually impossible for  
 13 members of the Class individually to redress effectively the wrongs done to them by Sony. Even if Class  
 14 members could afford such individual litigation, the court system could not. Individualized litigation  
 15 presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the  
 16 delay and expense to all parties, and to the court system, presented by the complex legal and factual issues  
 17 of the case. By contrast, the class action device presents far fewer management difficulties, and provides  
 18 the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court.  
 19 Upon information and belief, members of the Class can be readily identified and notified.

20 116. Sony has acted, and refuses to act, on grounds generally applicable to the Class, thereby  
 21 making appropriate final equitable and injunctive relief with respect to the Class as a whole.

## 22 **CLAIMS FOR RELIEF**

23 117. Plaintiffs bring each of the following claims for relief pursuant to California law because  
 24 Sony's Terms of Service and User Agreement specify "[t]he laws of the State of California, without  
 25 regard to conflict-of-law rules, govern this agreement and any dispute between you and the Sony  
 26 Entities."<sup>43</sup> Plaintiffs' reference to Sony's choice-of-law clause is without waiver of their position that

27  
 28 <sup>43</sup> See <https://www.playstation.com/en-us/legal/psn-terms-of-service/>.

Sony's attempted disclaimer of warranties is void and/or unconscionable for the reasons specified below. In the alternative, Plaintiffs bring the claims for relief under the laws of Plaintiffs' respective states of purchase.

# **COUNT I**

## **VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *et seq.*) ("CLRA") (On behalf of the Nationwide Class or, in the alternative, the California Class)**

118. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

119. Sony is a "person" as that term is defined in CAL. CIV. CODE § 1761(c).

120. Plaintiffs and members of the Class are "consumers" as that term is defined in CAL. CIV. CODE § 1761(d).

121. Sony engaged in unfair and deceptive acts in violation of the CLRA by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and the Class members that the PS5 and DualSense Controllers suffer from the Drift Defect. These acts and practices violate, at a minimum, the following CLRA sections:

(a)(5) Representing that goods or services have sponsorships, characteristics, uses, benefits or quantities which they do not have;

(a)(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and

(a)(9) Advertising goods and services with the intent not to sell them as advertised.

122. Sony's unfair or deceptive acts or practices occurred repeatedly in its trade or business, and were capable of deceiving a substantial portion of the purchasing public.

123. Sony knew that the PS5 and DualSense Controllers were defective, would fail prematurely, and were not suitable for their intended use.

124. Sony was under a duty to Plaintiffs and the Class to disclose the defective nature of the devices because:

a. Sony was in a superior position to know the true state of facts about the defect;

- 1           b. Plaintiffs and the Class members could not reasonably have been expected to learn  
2           or discover that the devices had a defect at the time of purchase; and
- 3           c. Sony knew that Plaintiffs and the Class members could not reasonably have been  
4           expected to learn or discover the defect and the associated costs until the  
5           manifestation of the defect.

6           125. In failing to disclose the Drift Defect and the associated costs and harm that result from it,  
7 Sony has knowingly and intentionally concealed material facts and breached its duty to disclose this  
8 material information.

9           126. The facts concealed or not disclosed by Sony to Plaintiffs and the Class members are  
10 material in that a reasonable consumer would have considered them to be important in deciding whether  
11 to purchase the devices or pay a lesser price. Had Plaintiffs and the Class known about the defective  
12 nature of the PS5 and DualSense Controllers, they would not have purchased them or would have paid  
13 less for them than they did.

14           127. As a direct and proximate result of Sony's conduct, Plaintiffs and Class members have  
15 been harmed, including, but not limited to: (1) paying more for the PS5 or DualSense Controllers than  
16 they were worth and more than Plaintiffs and Class Members would have had they known of the defect,  
17 (2) paying out of pocket attempting to repair the defect and/or for replacement controllers; and (3) lost  
18 time addressing the defect.

19           128. Sony's violations present a continuing risk to Plaintiffs and members of the Class, and the  
20 California general public. Defendant's unlawful acts and practices complained of herein affect the public  
21 interest and are likely to be repeated. Injunctive relief by and large would benefit the general public here.  
22 Injunctive relief benefits Plaintiffs only incidentally as members of the general public, because Plaintiffs  
23 have already been injured by and are therefore aware of the alleged misconduct of Nintendo.

24           129. Plaintiffs sent a CLRA notice on behalf of themselves and a Class of similarly situated  
25 individuals to Sony on April 9, 2021, providing the notice required by CAL. CIV. CODE § 1782(a).  
26 Plaintiffs seek only injunctive relief pursuant to this claim. If Defendant does not cure the violations of  
27 the CLRA alleged herein within the 30 day cure period, Plaintiffs will amend their pleading to add a  
28 demand for damages.

130. Plaintiffs further seek an order awarding costs of court and attorneys' fees pursuant to CAL. CIV. CODE § 1780(e).

131. Attached hereto as Exhibit "A" is a CLRA venue declaration submitted pursuant to Cal. Civ. Code 1780(d).

## **COUNT II**

### **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE §§ 17200, *et seq.* ("UCL") (On behalf of the Nationwide Class, or, in the alternative, the California Class)**

132. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

133. Sony has violated and continues to violate California's UCL, which prohibits unlawful, unfair, and fraudulent business acts or practices. Sony's acts and practices, as alleged in this complaint, constitute unlawful, unfair, and fraudulent business practices in violation of the UCL.

134. In particular, Sony marketed, distributed, advertised, and sold DualSense Controllers in violation of the UCL even though DualSense Controllers are not durable and are not capable of functioning reliably past its limited one-year warranty. Instead, the DualSense Controllers' are subject to drifting, or registering phantom movements from the joystick without user input, which significantly interferes with gameplay, thereby preventing the phones from functioning appropriately. Despite Sony touting the DualSense Controller as having "next-generation features," the Drift Defect renders the DualSense Controllers unsuitable for their primary purpose. Sony failed to disclose material facts concerning DualSense Controllers' performance at the point of sale and otherwise, despite touting and advertising the DualSense Controllers as a high-quality, durable product.

### **Unlawful**

135. Sony's business acts and practices are unlawful, in violation of the UCL, in that they violate the legislatively declared policy against unfair methods of business competition as set forth in the Song-Beverly Consumer Warranty Act. Sony also violated the California Consumers Legal Remedies Act, CAL. CIV. CODE §§ 1750, *et seq.*, various other state statutes asserted herein, and breached its express and implied warranties for the reasons set forth in this Amended Complaint.

**Unfair**

136. Sony's conduct is unfair in violation of the UCL, because it violates California public policy, legislatively declared in the Song-Beverly Consumer Warranty Act, requiring a manufacturer—defined as a person or entity that “manufactures, assembles, or produces consumer goods”—to ensure that goods it places on the market are fit for their ordinary and intended purposes.

137. Sony acted in an unethical, unscrupulous, outrageous, oppressive, and substantially injurious manner, including as follows:

- a. Sony promoted and sold PS5 consoles and DualSense Controllers that it knew were defective, possess the drifting issue, and fail prematurely;
- b. Sony failed to disclose that the PS5 and DualSense Controllers are defective, and represented through advertising, product packaging, press releases, and other sources that they possessed particular qualities that were inconsistent with its internal knowledge;
- c. Sony made repairs or gave replacements that were ineffective to remove the Drifting Defect, exposing consumers to repeated instances of failure and rendering its warranty useless;
- d. Sony failed to exercise adequate quality control and due diligence over the PS5 and DualSense Controllers before launch; and
- e. Sony minimized the scope and severity of the problems with the PS5 and DualSense Controllers, refusing to acknowledge that their joysticks are defective, failing to provide adequate relief to consumers.

138. The gravity of harm resulting from Sony's unfair conduct outweighs any potential utility. The practice of selling defective PS5 consoles and DualSense Controllers without providing an adequate remedy to cure the defect—and continuing to sell them without full and fair disclosure of the defect—harms the public at large and is part of a common and uniform course of wrongful conduct.

139. The harm from Sony's conduct was not reasonably avoidable by consumers because the PS5 and DualSense Controllers suffer from a defect, and Sony did not disclose the defect, even after receiving a large volume of consumer complaints. Plaintiffs did not know of, and had no reasonable means of discovering, PS5 and DualSense Controllers are defective.



140. There were reasonably available alternatives that would further Sony's business interests of satisfying and retaining their customers while maintaining profitability, such as: (1) allowing adequate development time to analyze the results of pre-release testing and implementing corrective measures, including before launching the PS5; (2) acknowledging the defect and providing a permanent fix for defective joysticks and controls; (3) disclosing the defect to prospective purchasers; and (4) offering refunds or suitable non-defective replacement devices to consumers whose PS5 and DualSense Controllers have failed.

### **Fraud by Omission**

141. Sony's acts and practices also constitute fraudulent practices in that they are likely to deceive a reasonable consumer. As described above, Sony knowingly misrepresents(ed) and conceals(ed) material facts related to DualSense Controllers' performance, specifically with respect to the functionality of the joystick and ease of gameplay, including in the following ways:

- a. Sony knowingly and intentionally concealed from consumers that the PS5 and DualSense Controllers contain a latent defect that renders them prone to drifting and failure.
- b. Sony volunteered information to consumers through advertising and through other means that the PS5 and DualSense Controllers were functional, premium gaming devices without disclosing information that would have materially qualified these partial representations.
- c. Sony promoted the high-quality and premium features of the PS5 and DualSense Controllers knowing they are defective and failed to correct the misleading partial disclosures.

142. Sony had ample means and opportunities to alert Plaintiffs and similarly situated consumers to the fact that the PS5 and DualSense Controllers are defective, including on its website; in advertisements for the PS5 or DualSense Controllers; on external product packaging; in user and warranty manuals; and as part of the standardized Ps5 set-up process. Sony failed to disclose the defect altogether.

143. Had Sony not misrepresented and concealed these facts, Plaintiffs, class members, and reasonable consumers would not have purchased a PS5 or DualSense Controller or would have paid significantly less for it.

1           144. Sony was under a duty to disclosure the defect given its exclusive knowledge of the Drift  
2 Defect because it actively concealed the defect from consumers, and because it made partial  
3 representations about the PS5 and DualSense Controllers without also disclosing the latent defect.

4           145. As a direct and proximate result of Sony's business practices, Plaintiffs and proposed Class  
5 members suffered injury in fact, including lost money or property, because they purchased and paid for a  
6 product that they otherwise would not have (or would have paid less for).

7           146. Through its unlawful, unfair, and fraudulent conduct, Sony acquired money that Plaintiffs  
8 and Class members once had an ownership interest in. Sony acquired money from them insofar as they  
9 purchased their PS5 consoles and DualSense Controllers directly from Sony or through its retailers (e.g.  
10 Wal-Mart, Target, Costco, GameStop, Best Buy, Amazon, Target).

11           147. Sony's wrongful acts will continue unless restrained and enjoined by order of this Court.  
12 Plaintiffs and proposed Class members are entitled to an injunction and other equitable relief, including  
13 restitutionary disgorgement of all profits accruing to Sony, because of Sony's ongoing unfair and  
14 deceptive practices, and such other orders as may be necessary to prevent Sony's future violations of the  
15 UCL. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs are entitled to (i) an order on behalf of the  
16 general public enjoining Sony from committing violations of the UCL; (ii) requiring Sony to immediately  
17 cease the sale of DualSense Controllers with the Drift Defect; (iii) requiring Sony to give individualized  
18 notice to all consumers who purchased DualSense Controllers during the applicable limitations periods  
19 and the public at large of the existence of the Drift Defects; (iv) requiring Sony to give individualized  
20 notice to all consumers who purchased DualSense Controllers within the applicable limitations periods  
21 of their rights under the UCL and applicable California law; (v) requiring Sony to repair or replace Class  
22 members' DualSense Controllers with non-defective DualSense Controllers; and (vi) establishing an  
23 effective monitoring mechanism to ensure Sony's continued compliance with the terms of the injunction.  
24 To the extent any of these remedies are equitable, Plaintiffs seek them in the alternative to any adequate  
25 remedy at law they may have.  
26  
27  
28

**COUNT III**

**VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT  
CAL. CIV. CODE §§ 1792, *et seq.***

**(On behalf of the Nationwide Class or, in the alternative, the California Class)**

148. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

149. Plaintiffs are “buyers” within the meaning of California Civil Code section § 1791(b).

150. Sony is a manufacturer within the meaning of California Civil Code section 1791(j). Sony was responsible for producing the PS5 and DualSense Controllers and directed and was involved in all stages of the production and manufacturing process.

151. The PS5 and DualSense Controllers are “consumer goods” within the meaning of California Civil Code § 1791(a).

152. Sony impliedly warranted to Plaintiffs that the PS5 and DualSense Controllers each purchased was “merchantable” under California Civil Code sections 1791.1(a) and 1792.

153. Sony breached the implied warranty of merchantability by producing, manufacturing, and selling controllers that were not of merchantable quality. The DualSense Controllers are defective, resulting in the joystick drifting without user input rendering phantom movements that interfere with gameplay. The DualSense Controllers are therefore unfit for the ordinary purpose for which gaming controllers are used and would not pass without objection in the gaming controllers trade.

154. The defect in the DualSense Controllers is latent. Though the DualSense Controllers appear operable when new, the Drifting Defect exists in the product at the time of sale and throughout the one-year Limited Warranty period. Accordingly, any subsequent discovery of the defect beyond that time does not bar an implied warranty claim under the Song-Beverly Act.

155. Any attempt by Sony to disclaim its implied warranty obligations under the Song-Beverly Act is ineffective due to its failure to adhere to California Civil Code sections 1792.3 and 1792.4. Those sections provide that, in order to validly disclaim the implied warranty of merchantability, a manufacturer must “in simple and concise language” state: “(1) The goods are being sold on an ‘as is’ or ‘with all faults’ basis. (2) The entire risk as to the quality and performance of the good is with the buyer. (3) Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or retailer

1 assumes the entire cost of all necessary servicing or repair.” Sony’s attempted warranty disclaimer does  
2 not conform to sections 1792.3 and 1792.4.

3 156. As a direct and proximate cause of Sony’s breaches of the Song-Beverly Consumer  
4 Warranty Act, Plaintiffs and Class members have been damages in an amount to be proven at trial.

5 157. Plaintiffs seek costs and expenses, including reasonable attorneys’ fees, under California  
6 Civil Code § 1794.

7 **COUNT IV**  
8 **BREACH OF EXPRESS WARRANTY**  
9 **(Under California Law on behalf of the Nationwide Class or, in the alternative,**  
10 **under respective State Laws of the State Classes)**

11 158. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though  
12 fully set forth herein.

13 159. Sony is a “merchant” as defined under the Uniform Commercial Code (“UCC”).

14 160. The PS5 and DualSense Controllers are “goods” as defined under the UCC.

15 161. Sony expressly warranted that the PS5 and DualSense Controllers were of high quality  
16 and, at a minimum, would actually work properly and be suitable for gameplay. Sony specifically  
17 warranted attributes and general functionality of the DualSense Controllers.

18 162. Sony also expressly warranted that it would repair and/or replace material defects in  
19 material and/or workmanship free of charge that occurred during the applicable warranty periods.<sup>44</sup>

20 163. Sony breached its warranties by selling to Plaintiffs and Class members DualSense  
21 Controllers with a known defect, and which are not of high quality, and are predisposed to fail prematurely  
22 and/or fail to function properly. Sony also breached its warranty by not correcting the Defect and failing  
23 to provide an adequate repair when contacted by Plaintiffs and Class members following manifestation  
24 of the Defect.

25 164. Plaintiffs notified Sony of the breach within a reasonable time or was not required to do  
26 so, because affording Sony a reasonable opportunity to cure its breach of written warranty would have  
27

28 <sup>44</sup> See <https://www.playstation.com/en-us/legal/warranties/ps5/> (last visited May 5, 2021).

1 been futile. Sony also knew of the Defect and chose to conceal it and to fail to comply with its warranty  
2 obligations.

3 165. Sony's attempt to disclaim or limit these express warranties vis-à-vis consumers is  
4 unconscionable and unenforceable under these circumstances. Sony's warranty limitation is  
5 unenforceable because it knowingly sold a defective product without informing consumers about the  
6 Defect.

7 166. Sony's attempt to limit its express warranty in a manner that would result in replacing its  
8 defectively designed DualSense Controllers with identical defective DualSense Controllers causes the  
9 warranty to fail its essential purpose and renders the warranty null and void.

10 167. The time limits contained in Sony's warranty period were also unconscionable and  
11 inadequate to protect Plaintiffs and Class members. Among other things, Plaintiffs and Class members  
12 had no meaningful choice in determining these time limitations, the terms of which unreasonably favor  
13 Sony. A gross disparity in bargaining power exists between Sony and Class members, and Sony knew or  
14 should have known that the DualSense Controllers were defective at the time of sale and would fail well  
15 before the end of their useful lives.

16 168. These warranties formed the basis of the bargain that was reached when Plaintiffs and  
17 other Class members purchased DualSense Controllers.

18 169. Plaintiffs and other Class members have complied with all obligations under the warranty,  
19 or otherwise have been excused from performance of said obligations as a result of Sony's conduct  
20 described herein.

21 170. As a direct and proximate cause of Sony's breach, Plaintiffs and Class members bought  
22 DualSense Controllers they otherwise would not have, overpaid for their DualSense Controllers, did not  
23 receive the benefit of their bargain, and their DualSense Controllers suffered a diminution in value.  
24 Plaintiffs and Class members have also incurred and will continue to incur costs for repair and  
25 replacement of their defective DualSense Controllers.

26 171. Plaintiff and Class members are entitled to legal and equitable relief against Sony,  
27 including damages, consequential damages, specific performance, attorney fees, costs of suit, and such  
28 further relief as the Court may deem proper.

**COUNT V**

**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY  
(Under California Law on behalf of the Nationwide Class or, in the alternative,  
under respective State Laws of the State Classes)**

172. Plaintiffs, individually and on behalf of the Class, repeat and reallege the foregoing paragraphs as though fully set forth herein.

173. Sony is a “merchant” as defined under the UCC.

174. The PS5 and DualSense Controllers are “goods” as defined under the UCC.

175. A warranty that DualSense Controllers were in merchantable quality and condition is implied by law in transactions for the purchase of the PS5 and DualSense Controllers. Sony impliedly warranted that the DualSense Controllers were of good and merchantable condition and quality, fit for their ordinary intended use, including with respect to reliability, operability, gameplay, and substantial freedom from defects.

176. The DualSense Controllers, when sold, and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which they are used. The Defect renders the devices unmerchantable, as they are unreliable, partially or fully inoperable, and not substantially free from defects.

177. Sony was provided with notice of the issues complained of herein by numerous complaints filed against them, including the instant lawsuit, within a reasonable amount of time.

178. Plaintiffs and the other Class members had sufficient direct dealings with either Sony or its agents to establish privity of contract between Sony on one hand, and Plaintiffs and each of the Class members on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the Class members are intended third-party beneficiaries of contracts between Sony and its third-party retailers, and specifically, of Sony’s implied warranties. The dealers were not intended to be the ultimate consumers of the devices and have no rights under the warranty agreements; the warranty agreements were designed for and intended to benefit the consumers only.

179. As a direct and proximate result of the breach of said warranties, Plaintiffs and Class members were injured, and are entitled to damages.



**COUNT VI**

**UNJUST ENRICHMENT**

**(Under California Law on behalf of the Nationwide Class or, in the alternative,  
under respective State Laws of the State Classes)**

180. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

181. This claim is pleaded in the alternative to the other warranty-based claims set forth herein.

182. As the intended and expected result of its conscious wrongdoing, Sony has profited and benefited from the purchase of PS5 or DualSense Controllers with the Defect.

183. Sony has voluntarily accepted and retained these profits and benefits, with full knowledge and awareness that, as a result of Sony's misconduct alleged herein, Plaintiffs and the Class were not receiving devices of the quality, nature, fitness, or value that had been represented by Sony, and that a reasonable consumer would expect. Specifically, Plaintiffs and the Class members expected that when they purchased their devices, they would not be equipped with a defective joystick that would interfere with gameplay.

184. Sony has been unjustly enriched by its fraudulent, deceptive, unlawful, and unfair conduct, and its withholding of benefits and unearned monies from Plaintiffs and the Class, at the expense of these parties.

185. Equity and good conscience militate against permitting Sony to retain these profits and benefits.

**COUNT VII**

**VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT  
(On Behalf of Plaintiff Avelar and the Connecticut Class)**

186. Plaintiffs incorporate by reference all preceding and subsequent paragraphs.

187. Plaintiff Avelar brings this claim individually and on behalf of the Connecticut Class Members.

188. The Connecticut Unfair Trade Practices Act prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110(b)(a).

1           189. Sony engaged in unfair or deceptive trade practices that violated the Connecticut Unfair  
2 Trade Practices Act as described below and alleged throughout this Complaint. By concealing the Drift  
3 Defect and failing to engage in fair and upright business practices, Sony knowingly and intentionally  
4 misrepresented and omitted material facts in connection with the sale of PS5 consoles and DualSense  
5 Controllers. Sony misrepresented, concealed, suppressed, or omitted material facts relating to PS5  
6 consoles and DualSense Controllers and the Drift Defect in the course of its business.

7           190. Sony also engaged in unlawful trade practices by employing deception, deceptive acts or  
8 practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with  
9 intent that others rely upon such concealment, suppression or omission, in connection with the sale of  
10 PS5 consoles and DualSense Controllers.

11           191. Sony's unfair and deceptive acts or practices occurred repeatedly in Sony's trade or  
12 business and were capable of deceiving a substantial portion of the purchasing public.

13           192. Sony knew or should have known that its conduct violated the Connecticut Unfair Trade  
14 Practices Act.

15           193. Had Plaintiff Avelar and the Connecticut Class Members known about the Drift Defect,  
16 they would either not have purchased their PS5 consoles and DualSense Controllers or would have paid  
17 less for them. Plaintiff Avelar and the Connecticut Class Members did not receive the benefit of their  
18 bargain as a result of Sony's misconduct.

19           194. Sony owed Plaintiff Avelar and the Connecticut Class Members a duty to disclose the truth  
20 about the Drift Defect because Sony: (a) possessed exclusive, specific and superior knowledge of the  
21 Drift Defect; (b) intentionally concealed the foregoing from Plaintiff Avelar and the Connecticut Class  
22 Members; and/or (c) made incomplete representations regarding the quality and characteristics of PS5  
23 consoles and DualSense Controllers while purposefully withholding material facts that contradicted these  
24 representations.

25           195. Plaintiff Avelar and the Connecticut Class Members suffered monetary damages as a result  
26 of Sony's conduct.

196. Sony's violations present a continuing risk to Plaintiff Avelar and the Connecticut Class Members, as well as to the general public. Sony's unlawful acts and practices complained of herein affect the public interest.

197. Sony is liable to Plaintiff Avelar and the Connecticut Class Members for actual damages, punitive damages, equitable relief, and attorneys' fees and costs. Conn. Gen. Stat. § 42- 110g(a), (d).

198. A copy of this complaint is being mailed to the Connecticut Attorney General and the Connecticut Commissioner of Consumer Protection. Conn. Gen. Stat. § 42-110g(d).

### **COUNT VIII**

#### **VIOLATION OF N.Y. GEN. BUS. LAW § 349 (On Behalf of Plaintiff McShane and the New York Class)**

199. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

200. Plaintiff McShane brings this Count on behalf of himself and on behalf of the New York class members.

201. Plaintiff McShane and class members are "persons" within the meaning of the New York General Business Law ("GBL"). N.Y. GEN. BUS. LAW § 349(h).

202. Sony is a "person, firm, corporation or association or agent or employee thereof" within the meaning of the GBL. N.Y. GEN. BUS. LAW § 349(b).

203. Under GBL Section 349, "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . declared unlawful." N.Y. GEN. BUS. LAW § 349(a).

204. In the course of business, trade, or commerce, Sony willfully failed to disclose and actively concealed the Drift Defect, as discussed herein, and otherwise engaged in activities with a tendency or capacity to deceive. Sony also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of defective PS5 consoles and DualSense Controllers.

1           205. Sony knew, through pre-release testing and immediate negative consumer responses  
2 following the release of the PS5 consoles and DualSense Controllers, that the DualSense Controllers were  
3 plagued with the Drift Defect, and that the PS5 consoles and DualSense Controllers did not perform as  
4 advertised or expected. Sony knew this before it released the PS5 consoles and DualSense Controllers or  
5 prior to offering them for sale to consumers, but concealed all of that information.

6           206. By failing to disclose the Drift Defect and advertising the PS5 consoles and DualSense  
7 Controllers as high quality, and by presenting itself as a reputable video game hardware manufacturer,  
8 Sony engaged in deceptive business practices in violation of GBL Section 349.

9           207. Sony's deceptive acts and conduct was directed at Plaintiff McShane and other consumers.  
10 Sony's deceptive acts and practices were consumer-oriented because they had a broad impact on  
11 consumers at large, affecting all purchasers of PS5 consoles and DualSense Controllers.

12           208. Sony's deceptive acts or practices were materially misleading. Sony's conduct was likely  
13 to and did in fact deceive reasonable consumers, including Plaintiff McShane and the other class  
14 members, about the true performance of the PS5 consoles and DualSense Controllers, the quality of the  
15 Sony brand, the true value of the PS5 consoles and DualSense Controllers.

16           209. The existence of the defect was material to Plaintiff McShane and class members.

17           210. Sony intentionally and knowingly concealed material facts regarding the PS5 consoles and  
18 DualSense Controllers with an intent to mislead Plaintiff McShane and the New York class members.

19           211. Sony possessed exclusive knowledge that it was manufacturing, selling, and distributing  
20 PS5 consoles and DualSense Controllers that are plagued with the Drift Defect and that do not perform  
21 as advertised, and it intentionally concealed the foregoing material facts from Plaintiff McShane and  
22 members of the class, who did not have access to this information.

23           212. Accordingly, Plaintiff McShane and New York Class members were unaware, and did not  
24 have reasonable means of discovering, the material facts that Sony failed to disclose.

25           213. Due to the defect, the value of the PS5 consoles and DualSense Controllers have greatly  
26 diminished. Aside from the fact that the PS5 consoles and DualSense Controllers do not function properly  
27 and cannot be used for their core purpose (i.e., gaming), in light of the stigma attached to the PS5 consoles  
28 and DualSense Controllers, they are now worth significantly less than they otherwise would be.

214. Plaintiff McShane and similarly situated consumers in New York suffered ascertainable loss caused by Sony's concealment of and failure to disclose material information. Plaintiff McShane and class members who purchased the PS5 consoles and DualSense Controllers either would have paid less for them or would not have purchased them at all. Due to Sony's deceptive or unfair conduct, Plaintiff McShane and the New York class members overpaid for their PS5 consoles and DualSense Controllers and did not receive the benefit of their bargain.

215. As a direct and proximate result of Sony's violations of the GBL Section 349, Plaintiff and the class members in New York have suffered injury-in-fact, entitling them to recovery of damages and an order enjoining Sony's wrongful conduct.

216. Sony's acts and practices were willful and knowing, and Plaintiff McShane and New York class members are entitled to injunctive relief, recovery of the greater of actual damages or fifty dollars per violation, treble damages up to one thousand dollars, and reasonable costs and attorneys' fees. *See* N.Y. GEN. BUS. LAW § 349(h).

### **COUNT IX**

#### **VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT OHIO REV. CODE ANN. §§ 1345.01, *et seq.* ("OCSA") (On Behalf of Plaintiffs McGuckin and Perez and the Ohio Class)**

217. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

218. Plaintiffs McGuckin and Perez bring this claim on behalf of the Ohio Class, based upon, *inter alia*, the fact that they purchased their PS5 consoles and DualSense Controllers in the state of Ohio.

219. Sony is a "supplier" of PS5 consoles and DualSense Controllers, within the meaning of the OCSA. *See* OHIO REV. CODE ANN. § 1345.01(C).

220. The OCSA is broadly drafted, applying to the sale of consumer goods "to an individual for purposes that are primarily personal, family, or household [uses]." OHIO REV. CODE ANN. § 1345.01(A). Sony's conduct in this case falls within the scope of the OCSA.

221. The OCSA provides that "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction." OHIO REV. CODE ANN. § 1345.02(A).

222. The OCSA broadly prohibits unfair, deceptive, and unconscionable practices in

1 consumer sales transactions, including the sale of services. OHIO REV. CODE ANN. § 1345.02(A).

2 223. The OCSA further provides that “a consumer” has a private cause of action for violations  
3 of the statute, and expressly allows for class actions. OHIO REV. CODE ANN. § 1345.09.

4 224. As detailed herein, Sony’s conduct was unfair, deceptive, and unconscionable.

5 225. Sony acted in the face of prior notice that its conduct was deceptive, unfair, or  
6 unconscionable. Material misrepresentations concerning the qualities and performance of PS5 consoles  
7 and DualSense Controllers, as well as material omissions concerning the Drift Defect, constitute a  
8 violation of the statute.

9 226. It is also a deceptive act or practice for purposes of the OCSA if a supplier makes  
10 representations, claims, or assertions of fact in the absence of a reasonable basis in fact. *See* OHIO REV.  
11 CODE ANN. § 109:4-3-10(A).

12 227. Sony’s actions as set forth above occurred in the conduct of trade or commerce.

13 228. The Ohio Attorney General has made available for public inspection prior state court  
14 decisions which have held that the acts and omissions of Sony detailed in this complaint, including, but  
15 not limited to, the failure to honor implied warranties, the making and distribution of false, deceptive,  
16 and/or misleading representations, and the concealment and/or non-disclosure of a material defect,  
17 constitute deceptive sales practices in violation of the OCSA. These cases including, but not limited to,  
18 the following: *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382); *State ex rel. Montgomery v. Ford*  
19 *Motor Co.* (OPIF #10002123); *State ex rel. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF  
20 #10002025); *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 WL 533403 (Ohio. Ct. App. Apr. 10,  
21 2002) (OPIF #10002077); *Borrer v. MarineMax of Ohio*, No. OT-06-010, 2007 WL 431737 (Ohio Ct.  
22 App. Feb. 9, 2007) (OPIF #10002388); *State ex rel. Petro v. Craftmatic Organization, Inc.* (OPIF  
23 #10002347); *Cranford, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586); *State ex rel. Brown v.*  
24 *Lyons, et al.* (OPIF #10000304); *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427); *Khoury*  
25 *v. Lewis* (OPIF #10001995); *Mosley v. Performance Mitsubishi aka Automanage, Inc.* (OPIF  
26 #10001326); *Walls v. Harry Williams d/b/a Butch’s Auto Sales* (OPIF #10001524); and *Brown v. Spears*  
27 (OPIF #10000403); *see also Nessel v. Whirlpool Corp.*, No. 07-cv-3009, 2008 WL 2967703 (N.D. Ohio  
28 July 25, 2008).



229. As a direct and proximate result of Sony's violations of the OCSPA, Plaintiffs and members of the Ohio Class have been injured and suffered ascertainable loss.

230. Plaintiffs and the Ohio Class members have suffered injuries in fact and actual damages, including but not limited to overpayment for their PS5 consoles and DualSense Controllers and financial losses from the devaluation of their PS5 consoles and DualSense Controllers, all resulting from Sony's conduct and practices in violation of the OCSPA.

231. These injuries are of the type that the OCSPA was designed to prevent and are the direct and proximate result of Sony's unlawful conduct.

### **COUNT X**

#### **VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT (VA. CODE ANN. §§ 59.1-196, *et seq.*) (On behalf of Plaintiff Turner and the Virginia Class)**

232. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

233. Plaintiff brings this Count on behalf of the Virginia Class.

234. The Virginia Consumer Protection prohibits "(5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; ... (8) advertising goods or services with intent not to sell them as advertised ...; [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]" Va. Code Ann. § 59.1-200(A).

235. Sony is a "person" as defined by Va. Code Ann. § 59.1-198. The transactions between Plaintiff and the other Class members on one hand and Sony on the other, leading to the purchase or lease of the DualSense Controller by Plaintiff and the other Class members, are "consumer transactions" as defined by Va. Code Ann. § 59.1-198, because the DualSense Controllers were purchased primarily for personal, family or household purposes.

236. In the course of Sony's business, it willfully failed to disclose and actively concealed the Drift Defect in the DualSense Controllers as described above. Accordingly, Sony engaged in acts and

practices violating Va. Code Ann. § 59.1-200(A), including representing that DualSense Controllers have characteristics, uses, benefits, and qualities which they do not have; representing that DualSense Controllers are of a particular standard and quality when they are not; advertising DualSense Controllers with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

237. Sony's actions as set forth above occurred in the conduct of trade or commerce.

238. Sony's conduct proximately caused injuries to Plaintiff and the other Class members.

239. Plaintiff and the other Class members were injured as a result of Sony's conduct in that Plaintiff and the other Class members overpaid for their DualSense Controllers and did not receive the benefit of their bargain, and their DualSense Controllers have suffered a diminution in value. These injuries are the direct and natural consequence of Sony's misrepresentations and omissions.

240. Sony actively and willfully concealed and/or suppressed the material facts regarding the defective nature of the PS5 and DualSense Controllers, in whole or in part, with the intent to deceive and mislead Plaintiff and the other Class members and to induce Plaintiff and the other Class members to purchase the PS5 or DualSense Controllers at a higher price, which did not match the PS5 or DualSense Controllers' true value. Plaintiff and the other Class members therefore seek treble damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, hereby request that this Court enter an Order against Sony providing the following:

A. Certification of the proposed Classes, appointment of Plaintiffs and their counsel to represent the proposed Classes, and notice to the proposed Class to be paid for by Sony;

B. An order temporarily and permanently enjoining Sony from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

C. Public injunctive relief in the form of a recall or free replacement program and notice of same to all class members;

D. Awarding compensatory damages—including for overpayment at the point of sale, out of pocket expenses to address the defect, and for lost time addressing the defect—to Plaintiffs and members of the Class in an amount according to proof at trial;

E. Equitable relief in the form of buyback of the devices;

F. Costs, restitution, damages, including punitive damages, treble damages, penalties, and disgorgement in an amount to be determined at trial;

G. An Order requiring Sony to pay both pre- and post-judgment interest on any amounts awarded;

H. An award of costs and attorneys' fees; and

I. Such other or further relief as may be appropriate.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury for all claims so triable.

Respectfully submitted,

Dated: May 5, 2021

/s/ Tina Wolfson

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