

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LMARC TURNER

Plaintiff,

v.

SONY CORPORATION OF AMERICA,
and SONY INTERACTIVE
ENTERTAINMENT LLC,

Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Lmarc Turner, individually, and on behalf of all others similarly situated, by and through counsel, brings this action against Defendants Sony Corporation of America, Inc. and Sony Interactive Entertainment LLC (collectively “Defendants” or “Sony”). Plaintiff’s allegations herein are based upon personal knowledge and belief as to his own acts and upon the investigation of his counsel and information and belief as to all other matters.

INTRODUCTION

1. This is a class action lawsuit brought against Sony by Plaintiff on behalf of himself and similarly situated consumers who purchased the Sony PlayStation 5 (“PS5”) DualSense Wireless Controllers for the PS5 console (referred to herein as the “DualSense Controller”).

2. The DualSense Controller is manufactured, marketed, and sold by Sony. It is the controller for Sony’s latest and highly sought-after gaming console, the PS5. The DualSense Controller was released alongside the PlayStation 5 in November of 2020. At a Sony CES press conference in mid-January 2021, PlayStation’s President and CEO dubbed the launch of the PS5

the “biggest console launch of all time,” deeming it the “best console launch in history.”¹ As of mid-January 2021, best estimates suggested that the PS5 moved over four million units since launch.² Sony described the DualSense controller as “bring[ing] gaming worlds to life,” and including such “next-generation features like haptic feedback and dynamic adaptive triggers.”³

3. Contrary to these claims, however, the DualSense Controller is defective. Specifically, the DualSense Controllers that are used to operate the PS5 contain a defect that results in characters or gameplay moving on the screen without user command or manual operation of the joystick (“Drifting” or the “Drift Defect”). This defect significantly interferes with gameplay and thus compromises the DualSense Controller’s core functionality.

4. Sony is—and at all relevant times has been—aware of the Drift Defect through online consumer complaints, complaints made by consumers directly to it, and through its own pre-release testing. Since the PS5 was released last November, players have taken to social media to share stories about DualSense drift. One user reported the issue 10 days after receiving the PS5 console, stating that they tried every possible fix—power-cycling the console, turning Bluetooth on and off, resetting the controller, and charging it fully overnight—to no avail.⁴ In addition to the

¹ Reves, Brianna, *PS5 Is ‘Biggest Console Launch Of All Time’ According to PlayStation CEO*,” ScreenRant (Jan. 11, 2021), available: <https://screenrant.com/ps5-biggest-console-launch-all-time-playstation-ceo/> (last accessed Feb. 10, 2021).

² See Baird, Scott, *PS5 Sells Over 4 Million United Since Launch & Shows No Signs Of Stopping*, ScreenRant (Jan. 3, 2021), available: <https://screenrant.com/ps5-sales-4-million-xbox-series-nintendo-switch/> (last accessed Feb. 10, 2021).

³ See https://direct.playstation.com/en-us/accessories/accessory/dualsense-wireless-ps5-controller.3005715?emcid=pl-go-eg-psd-na&gclid=Cj0KCCQiapY6BBhCsARIsAOI_Gja1LXOkHkoMfGrPxiqg4gCYK13ACQI-UDT8TThs7gaeheGxdUllr0QaAi83EALw_wcB (last accessed Feb. 10, 2021).

⁴ Nortis, Ari, *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 accessed Feb. 10, 2021).

now thousands of online complaints, there has been significant negative publicity surrounding the Drift Defect in the gaming community.⁵

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

6. The drifting phenomenon has garnered both domestic and international scrutiny as well, with consumer advocacy groups in France, Belgium and Switzerland investigating drift activity in a popular controller from another manufacturer.⁶ Accordingly, Sony has been on notice of the existence of the drifting phenomenon for years.

⁵ See, e.g., Mansoor, Saqib, *Some DualSense Controllers Have Started Drifting*, SegmentNext (December 11, 2021), available at <https://segmentnext.com/2020/12/01/dualsense-controllers-drifting/> (remarking on the drifting issue as “plaguing a few DualSense controllers barely a month into the PlayStation 4 launch) (last accessed Feb. 10, 2021); Andrews, Jessica, *Reports of PS5 ‘Stick Drift’ Surface Weeks After Launch*, CBR (Nov. 30, 2020), available at <https://www.cbr.com/report-ps5-stick-drift-issue/> (noting that various online users have been experiencing drift within weeks of PS5's launch, 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”) (last accessed Feb. 10, 2021); Breslin, Richard, *DualSense Drift is Already a Problem For Some PS5 Gamers*, GameByte (Dec. 1, 2020), available at <https://www.gamebyte.com/dualsense-drift-is-already-a-problem-for-some-ps5-gamers/> (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.”) (last accessed Feb. 10, 2021).

⁶ See, e.g., *Fix Xbox One controller stick drift*, Nick Sturgess (Jun. 23, 2020), available: <https://www.stugr.com/2020/06/23/fix-xbox-one-controller-stick-drift.html> (last accessed Feb. 10, 2021); *Switch owner with engineering background discovers Joy-Con drift design flaw*, Nintendo enthusiast (Apr. 5, 2019), available at: <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), available at: <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”).

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.⁷

8. Even for in-warranty repairs for Drift, customers have to pay for shipping the controller to a Sony repair center—a cost that varies based on a number of factors, including location and the total weight of the package—and Sony does not reimburse customers for these shipping costs.⁸

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 Plaintiff, have suffered an ascertainable loss, injury in fact, and otherwise have been harmed by Sony’s conduct.

11. Accordingly, Plaintiff brings this action to redress Sony’s violations of state consumer fraud statutes, breach of warranty, and unjust enrichment. Plaintiff seeks monetary relief for damages suffered, declaratory relief, and public injunctive relief.

⁷ See Nortis, Ari, *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 accessed Feb. 10, 2021).

⁸ 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 Corporation of America 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 Corporation of America 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 New York and throughout the United States.

THE PARTIES

Plaintiff

15. Plaintiff Lmarc Turner is, and at all relevant times was, a resident and citizen of the state of Virginia.

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

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

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

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

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

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

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

Defendants

23. Defendant Sony Corporation of America is located at 25 Madison Avenue, New York, New York 10010. It is the United States headquarters of Sony Corporation, based in Tokyo, Japan. Sony's principal U.S. businesses include Sony Electronics Inc., Sony Mobile Communications (USA) Inc., Sony Interactive Entertainment LLC., Sony Pictures Entertainment Inc., Sony Music Entertainment and Sony/ATV Music Publishing LLC.

24. 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 ALLEGATIONS

A. PS5/DualSense Controllers and Nature of the Defect

25. 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.”⁹ 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 [] games;” “discover a deeper gaming experience with support for haptic feedback, adaptive triggers and 3D Audio technology.”¹⁰

26. 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.

⁹ See <https://www.playstation.com/en-us/ps5/> (last accessed Feb. 10, 2021).

¹⁰ See *id.*



27. 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.¹¹ An image of the front of the DualSense Controller is pictured below:

¹¹ See <https://www.playstation.com/en-us/accessories/dualsense-wireless-controller/> (last accessed Feb. 10, 2021).



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



29. Securing a PS5 console—particularly given the timing of the release right before the holidays—proved to be a “herculean task.”¹² Reports in early 2021 indicated that Sony had sold over four million PS5 units and showed “no signs of slowing down in 2021.”¹³ The demand for the PS5 going into the 2020 holiday season was incredible, and the system quickly sold out everywhere.¹⁴

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

31. 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 Controllers¹⁵:

- “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.”

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

¹² See Reves, Brianna, *PS5 Is ‘Biggest Console Launch Of All Time’ According to PlayStation CEO*,” ScreenRant (Jan. 11, 2021), available: <https://screenrant.com/ps5-biggest-console-launch-all-time-playstation-ceo/> (last accessed Feb. 10, 2021).

¹³ See Baird, Scott, *PS5 Sells Over 4 Million United Since Launch & Shows No Signs Of Stopping*, ScreenRant (Jan. 3, 2021), available: <https://screenrant.com/ps5-sales-4-million-xbox-series-nintendo-switch/> (last accessed Feb. 10, 2021).

¹⁴ See *id.*

¹⁵ <https://direct.playstation.com/en-us/accessories/accessory/dualsense-wireless-ps5-controller.3005715?smcid=pcd:us-en:web-pdc-accessories-dualsense-wireless-controller:buttonblock-buy-now> (last accessed Feb. 10, 2021).

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

34. 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.

35. 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.

36. 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 controllers that came with the PlayStation 4 console.¹⁶ The “common denominator” at the base of the “drift” of the analog joystick is reportedly the “quality of the unit used.”¹⁷ As one report explains:

No [joy]stick is built specifically for a console controller – these are units that have been on the market for years; that’s why the problem is common to different consoles spanning multiple generations. To demonstrate this, the iFixit teardown, for example, showed that 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.¹⁸

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

¹⁶ *The PS5’s DualSense also suffers from the “drift” of the sticks: because so many pads have the same problem*, Italy24News (Feb. 10, 2021), available: <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 accessed Feb. 10, 2021).

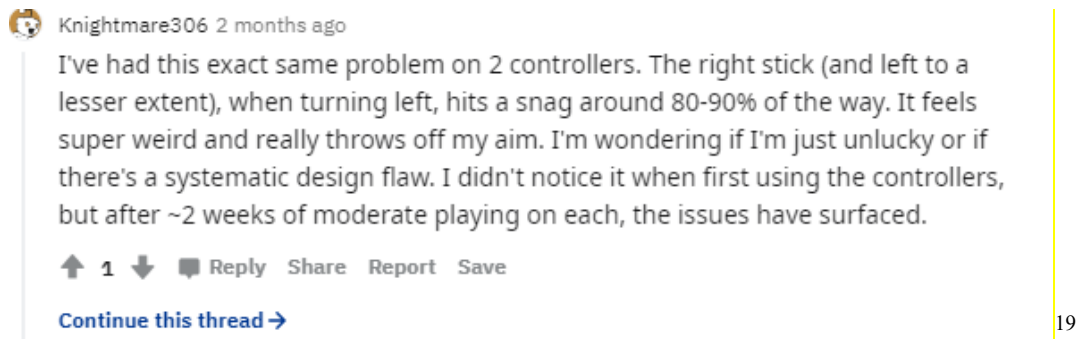
¹⁷ *Id.*

¹⁸ *Id.*

B. Customer Complaints

37. Plaintiff's 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.

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



39. 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 Plaintiff, or within only several days of use:

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https://www.reddit.com/r/PS5/comments/jzkqf7/in_case_you_didnt_know_the_dualsense_is_in_fact/ (last accessed Feb. 11, 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

20



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.

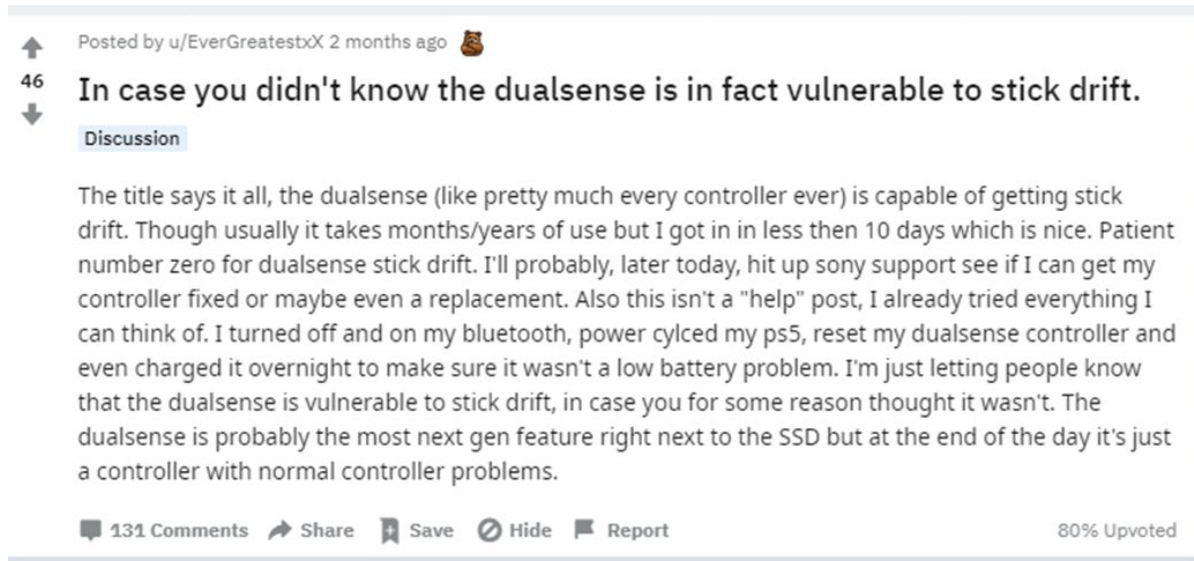
↑ 23 ↓ ■ Reply Share Report Save

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40. 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.

²⁰ https://www.reddit.com/r/PS5/comments/jvw04p/my_dualsenses_right_stick_starts_drifting/ (last accessed Feb. 11, 2021).

²¹ *See* https://www.reddit.com/r/PS5/comments/kb8cb6/anyone_else_experiencing_dualsense_stick_drift/ (last accessed Feb. 11, 2021).



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41. 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.²³

²²See

https://www.reddit.com/r/PS5/comments/jzkqf7/in_case_you_didnt_know_the_dualsense_is_in_fact/ (last accessed Feb. 10, 2021).

²³ The following complaints are reproduced as they appear online. Any typographical errors are attributable to the original author.



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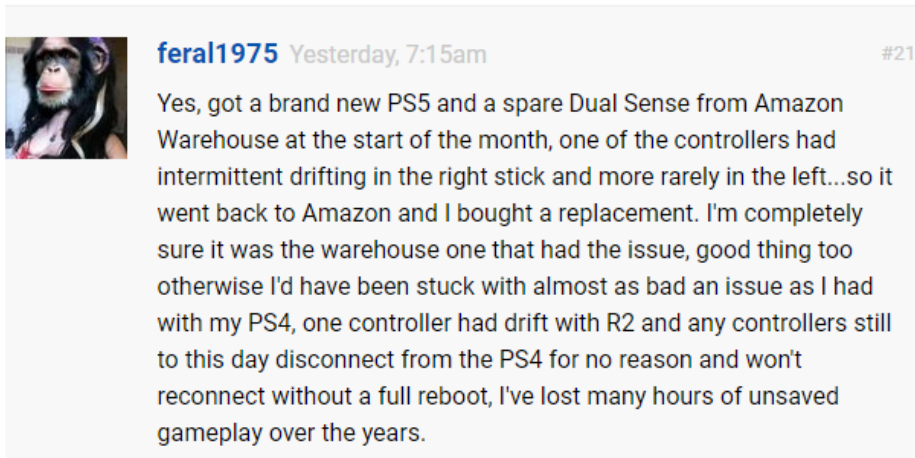
bladerunner2442 1 month ago

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.

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²⁴ <https://twitter.com/Nalverus/status/1357612378830077952> (last accessed Feb. 10, 2021).

²⁵ https://www.reddit.com/r/PS5/comments/kb2sql/ps5_dual_shock_controller_stick_drift/ (last accessed Feb. 11, 2021).



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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.

27

C. Knowledge

42. 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 have alerted it to the Defect.

43. Additionally, the DualSense Controller's predecessor, the DualShock 4 wireless controller that came with the PlayStation 4—released in November of 2013—also experienced drift. By mid-2014, users reported that their PlayStation 4 controllers would drift on its own instead

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https://www.pushsquare.com/news/2021/02/poll_have_you_been_experiencing_drift_on_your_dualsense_ps5_controller (last accessed Feb. 11, 2021).

²⁷ https://www.reddit.com/r/PS5/comments/k1bhzh/dualsense_drift/ (last accessed Feb. 11, 2021).

of where the user directed it to go.²⁸ Yet, despite being aware of joystick drift in the DualShock 4, Sony equipped the DualSense 5 with virtually the same analog components. A recent teardown of the PS5 and DualSense Controller by iFixit revealed that the two joysticks in the DualSense Controller were “basically identical to the Alps-brand sticks from the DualShock 4,” and indicating that the joysticks were still “prone to drift.”²⁹

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



45. Further, Sony has received droves of complaints about this issue both directly from consumers and through online forums and social media sites that it monitors. Not only that, Sony is well-aware that the drift phenomena have been plaguing the gaming community for years, with

²⁸ See https://www.amazon.com/DualShock-Wireless-Controller-PlayStation-Black-4/product-reviews/B00BGA9X9W/ref=cm_cr_arp_d_viewopt_kywd?pageNumber=1&filterByKeyword=drift (user complains of “the character on screen slowly drift down without me touching the right analog stick” and reports contacting Sony about the issue) (last accessed Feb. 10, 2021); https://www.reddit.com/r/PS4/comments/2rvyie/dualshock_4_analog_stick_drifting/ (reporting left analog drifting on a DualShock 4 controller that was about a year old) (last accessed Feb. 10, 2021);

²⁹ See https://www.amazon.com/DualShock-Wireless-Controller-PlayStation-Black-4/product-reviews/B00BGA9X9W/ref=cm_cr_arp_d_viewopt_kywd?pageNumber=1&filterByKeyword=drift (last accessed Feb. 10, 2021).

reports indicating that similar controllers from other well-known manufacturers had also been experiencing the drifting defect, as well as the prior model of the PlayStation 4 controller, the DualShock 4. Despite this knowledge, Sony has done nothing to modify the materials or design of the DualSense Controllers or otherwise respond to or correct drift.

46. Sony is well aware this type of defect would be material to its customers. In a recent patent application relating to reducing small amounts of lag in DualSense Controllers, Sony acknowledged: “with the growing sophistication of computer simulations such as computer games, players have become increasingly demanding of performance, one index of which is latency between gamer input and the resulting action on screen.”³⁰ Drifting, where the action on the screen does not follow the gamer input at all, interferes with gameplay significantly more.

47. It has been reported that, as of January 3, 2021, there have been over 4 million PS5 units sold since the PS5 launched in November of 2020 (not even counting additional DualSense Controllers purchased separately).³¹ Clearly, Sony would not be selling a product with such volume without first conducting extensive presale tests (such as failure analysis, stress tests, pressure tests, and friction tests)—especially in light of the public backlash for drifting in its competitors’ products—before bring the PS5 to market.

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

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

50. Despite knowing about the Drift Defect, Sony continues to market and sell the PS5

³⁰ See <https://pdfaiw.uspto.gov/.aiw?Docid=20210031100> (last accessed Feb. 11, 2021).

³¹ See Baird, Scott, *PS5 Sells Over 4 Million United Since Launch & Shows No Signs Of Stopping*, ScreenRant (Jan. 3, 2021), available: <https://screenrant.com/ps5-sales-4-million-xbox-series-nintendo-switch/> (last accessed Feb. 10, 2021).

and DualSense Controllers without disclosing the defect.

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

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

53. The options for consumers to fix a broke DualSense Controller with drift are slim: consumers can either go through Sony's PlayStation page, which has a dedicated portal for issues with PS5 hardware, for troubleshooting, or incur the out-of-pocket shipping cost of mailing the DualSense Controller to Sony for repairs. Consumers who mail their DualSense Controllers to Sony are then left without the use of their DualSense Controller for an upward of several weeks depending upon the consumer's location and the severity of the issue.³²

54. 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).

55. 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-

³² See Martinez, Phillip, *PS5 DualSense Controller Experiencing Its Own 'Joy-Con Drift,'* Newsweek (Feb. 10, 2021), available: <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 accessed Feb. 10, 2021).

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

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↓

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.

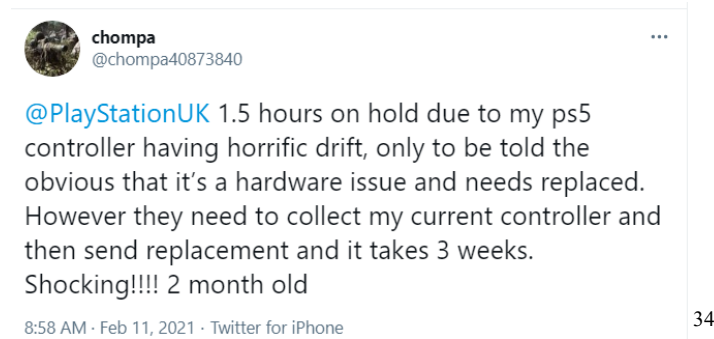
Tania:I understand this is important for you and I would like to help you but all our PS5 specialists are assisting through phone support. Please try to contact them later.

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

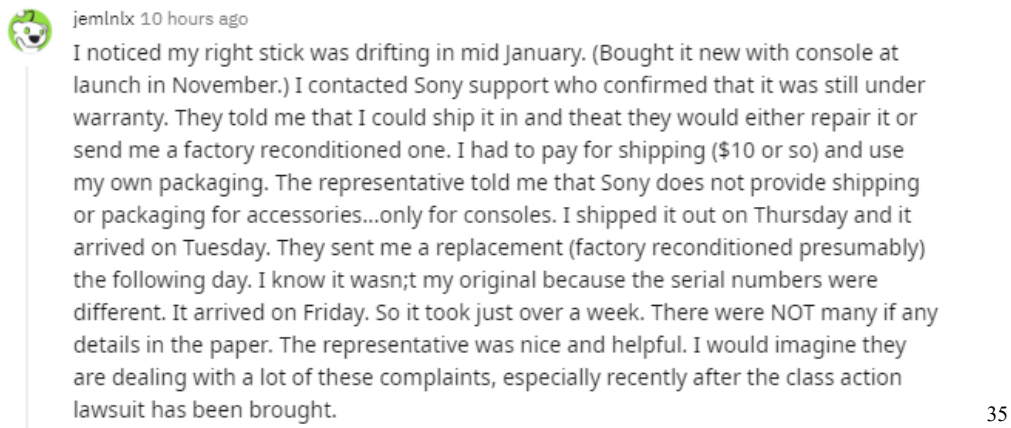
**The agent then ended the transcript and closed out

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³³ See https://www.reddit.com/r/PS5/comments/kqdmzc/sony_support_is_an_infinite_loop/ (last accessed Feb. 10, 2021).



56. 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.



57. Indeed, public complaints posted online already show several reports of consumers

³⁴ <https://twitter.com/chompa40873840/status/1359864337956040712> (last accessed Feb. 11, 2021).

³⁵ https://www.reddit.com/r/PS5/comments/kb2sql/ps5_dual_shock_controller_stick_drift/ (last accessed Feb. 11, 2021).

experiencing drift again after receiving refurbished or replacement DualSense Controllers back from Sony.



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

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58. 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.

59. 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

60. 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. Plaintiff seeks 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.

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https://www.reddit.com/r/PS5/comments/kb8cb6/anyone_else_experiencing_dualsense_stick_drift/ (last accessed Feb. 10, 2021).

In addition, or in the alternative, Plaintiff seeks certification of the following State Subclass:

Virginia Subclass:

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

61. 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. Plaintiff reserves 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.

62. **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 Plaintiff only through the discovery process, Plaintiff believes, 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 Plaintiff has 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.

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

- a. whether Sony engaged in the conduct alleged herein;
- b. whether the DualSense Controllers are defective;

c. whether Sony placed the PS5 and DualSense Controllers into the stream of commerce in the United States with knowledge of the Defect;

d. whether Sony knew or should have known of the Defect, and if so, how long it knew of this Defect;

e. when Sony became aware of the Defect;

f. whether Sony knowingly failed to disclose the existence and cause of the Defect;

g. whether Sony's conduct alleged herein violates consumer protection statutes, false advertising laws, warranty laws, and other laws as asserted herein;

h. whether Plaintiff and Class Members overpaid for their PS5 and/or DualSense Controllers in light of the Defect;

i. whether Plaintiff and Class Members have suffered an ascertainable loss as a result of the loss of their DualSense Controller's functionality;

j. whether Plaintiff and Class Members are entitled to damages, including punitive damages, as a result of Sony's conduct alleged herein, and if so, the amount or proper measure of those damages; and

k. whether Plaintiff and Class Members are entitled to equitable relief, including but not limited to restitution and/or injunctive relief, including public injunctive relief, and other state laws asserted herein.

64. **Typicality:** Plaintiff's claims are typical of the claims of the Class since Plaintiff purchased a PS5 and/or DualSense Controllers, as did each member of the Class. Plaintiff and Class members were injured in the same manner by Sony's uniform course of conduct alleged herein. Plaintiff and all Class members have the same claims against Sony relating to the conduct

alleged herein, and the same events giving rise to Plaintiff's claims for relief are identical to those giving rise to the claims of all Class Members. Plaintiff and all Class members sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Sony's wrongful conduct in selling and failing to remedy defective DualSense Controllers. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent Class Members.

65. **Adequacy**: Plaintiff is an adequate representative for the Class because his interests do not conflict with the interests of the Class that he seeks to represent. Plaintiff has retained counsel competent and highly experienced in complex class action litigation—including consumer fraud class action cases—and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

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

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

CLAIMS FOR RELIEF

COUNT I **BREACH OF EXPRESS WARRANTY**

68. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully set forth herein.

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

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

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

72. Sony also expressly warranted that it would repair and/or replace defects in material and/or workmanship free of charge that occurred during the applicable warranty periods.

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

74. Plaintiff notified Sony of the breach within a reasonable time or was not required to do so, because affording Sony a reasonable opportunity to cure its breach of written warranty would have been futile. Sony also knew of the Defect and chose to conceal it and to fail to comply with its warranty obligations.

75. Sony’s attempt to disclaim or limit these express warranties vis-à-vis consumers is unconscionable and unenforceable under these circumstances. Sony’s warranty limitation is

unenforceable because it knowingly sold a defective product without informing consumers about the Defect.

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

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

78. These warranties formed the basis of the bargain that was reached when Plaintiff and other Class members purchased DualSense Controllers.

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

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

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

COUNT II

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

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

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

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

85. 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.

86. 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.

87. 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.

88. Plaintiff 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 Plaintiff and each of the Class members on the other hand. Nonetheless, privity is not required here because Plaintiff 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.

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

COUNT III
UNJUST ENRICHMENT

90. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully set forth at length herein.

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

92. 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.

93. 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, Plaintiff 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, Plaintiff 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.

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

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

COUNT IV

**VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT
(VA. CODE ANN. §§ 59.1-196, *ET SEQ.*)**

96. Plaintiff Lmarc Turner (“Plaintiff,” for purposes of all Virginia Class Counts) incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

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

98. 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).

99. 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.

100. 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.

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

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

103. 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.

104. 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, Plaintiff, on behalf of himself and all others similarly situated, hereby request that this Court enter an Order against Sony providing the following:

A. Certification of the proposed Class and/or Subclass, appointment of Plaintiff and their counsel to represent the proposed Class, 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 Plaintiff 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

Plaintiff hereby demands a trial by jury for all claims so triable.

DATED this 12th day of February, 2021.

/s/ Steven L. Wittels
Steven L. Wittels
J. Burkett McInturff
WITTELS MCINTURFF PALIKOVIC
18 Half Mile Road
Armonk, New York 10504
Telephone: (914) 775-8862
Facsimile: (914) 273-2563
slw@wittelslaw.com
jbm@wittelslaw.com

Benjamin F. Johns (*pro hac vice to be filed*)
Samantha E. Holbrook (*pro hac vice to be filed*)
Alex M. Kashurba (*pro hac vice to be filed*)

**CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**

361 W. Lancaster Avenue
Haverford, Pennsylvania 19041
Telephone: (610) 642-8500
bfj@chimicles.com
seh@chimicles.com
amk@chimicles.com

Counsel for Plaintiff and the Proposed Class