

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>RICHARD GRISAFI, on behalf of himself and the Putative Class</p> <p>Plaintiff,</p> <p>v.</p> <p>SONY ELECTRONICS INC.</p> <p>Defendant.</p>	<p>Case No. No.18-8494-JMV-JBC</p> <p>Civil Action</p> <p>SECOND AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND</p>
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Plaintiff, by his attorney, Nagel Rice LLP, on behalf of himself and all others similarly situated, make the following allegations on personal knowledge and information and belief:

I. IDENTIFICATION OF PARTIES
(Local Rule 10.1)

1. The names and addresses of the named parties to this action are (i) Richard Grisafi, 47 Rose Avenue, Woodcliff Lake, New Jersey 07677; and (ii) Sony Electronics, Inc., 16530 Via Esprillo, San Diego, California 92127.

II. NATURE OF THE ACTION

2. Plaintiff brings this action on behalf of himself and all similarly-situated individuals (the "Class") and entities who purchased the Sony Dash, a personal internet viewer manufactured by Sony Electronics, Inc. ("SONY").

3. All of the claims asserted herein arise out of SONY's decision to unilaterally and without recourse cut off its support of the SONY Dash (the "Dash") and terminate its functionality as

of July 2017 through a forced firmware update which resulted in the device being "bricked."¹ As many disgruntled purchasers have posted on the internet, they are left with a paperweight, which cost between \$100 and \$200.

4. Consumers would not have purchased a SONY Dash if they knew that within just a few years of purchase SONY would choose to stop supporting the product because SONY did not want to maintain the servers for this product forcing its customers to download firmware that rendered the product useless.

5. The SONY Dash was only functional for a commercially unreasonable time.

6. SONY misrepresented in press releases and product packaging that the Dash would be "always on, always fresh and available at a glance." Sony also omitted material information regarding its intention to prematurely render the Dash obsolete from its marketing, advertising, and sale of the SONY Dash.

7. Many owners of the Dash have complained in public forums and to SONY about the bricking of the product, and have requested that SONY address and remedy the problem by providing a refund or equivalent replacement. SONY has failed to offer a refund or

¹ Bricking is a term commonly used in the electronics industry when updating a piece of hardware with a software update that renders the hardware useless after the update. See <https://www.urbandictionary.com/define.php?term=bricking>.

replacement that performs the functions SONY promised that the Dash would perform or provide a product of equivalent value.

8. As a direct and proximate consequence of SONY's conduct Plaintiff Grisafi and the other members of the Class purchased and currently own a useless product and have been damaged thereby.

9. Had Plaintiff and other members of the Class known that Sony manufactured the Dash with the ability to brick the product at any point after its introduction to the marketplace and in Sony's total discretion, they would not have bought a Dash, or would have paid substantially less for them.

10. Plaintiff and the Class seek actual damages, injunctive relief, restitution and/or disgorgement of profits, statutory damages, attorneys' fees, costs, and all other relief available to Plaintiff and the Class.

III. PARTIES

11. Plaintiff, Richard Grisafi, is a New Jersey citizen who resides in Woodcliff Lake, New Jersey 07677.

12. Defendant, Sony Electronics, Inc., is a subsidiary of Sony Corporation of America, with offices in Park Ridge, New Jersey and a headquarters at 16530 Via Esprillo, San Diego, California 92127.

13. At all relevant times, Defendant was engaged in the business of marketing, advertising, distributing, selling, and

warranting Electronic products, including the SONY Dash, in New Jersey and throughout the United States of America.

IV. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331. This Court also has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2), as the Class contains more than 100 members, at least one of whom maintains citizenship in a state diverse from Defendant, and seeks in the aggregate more than Five Million Dollars (\$5,000,000.00), exclusive of costs and interest.

15. Defendants are amenable to personal jurisdiction in New Jersey. A substantial portion of the wrongdoing alleged to have occurred took place in New Jersey, and SONY conducts business within the state to be sufficient to be considered present in New Jersey.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Plaintiff Grisafi is a resident of this judicial district, a substantial part of the events giving rise to the claims set forth herein occurred and emanated from this district, and Defendants' conduct has injured members of the Class residing in this district. Accordingly, this Court has jurisdiction over this action, and venue is proper in this judicial district.

V. FACTUAL BACKGROUND

A. The SONY Dash and the Advertised Benefits of the Product

17. SONY first announced the Dash at the 2010 Consumer Electronics Show in Las Vegas where it was described as a "personal application viewer" featuring built in Wi-Fi, stereo speakers, a USB port, and a 7-inch touch screen.

18. Brennan Mullin, SONY Electronics' senior vice president of the personal imaging and audio business touted the multiple uses for the Dash, stating, "With Dash, we're empowering consumers with a fun, interactive way to stay connected with their news, entertainment, interests and ultimately, their lives." Mullins indicated that, in addition to access to audio and video content from SONY 's Bravia Internet video platform which features YouTube, Pandora Internet radio, and others, the personal Internet viewer will have access to more than 1,000 free applications from Chumby Industries.

19. The January 6, 2010 Press Release issued by Sony in connection with the Consumer Electronics Show in Las Vegas, provided the following affirmative representations which were relied upon by purchasers, including Plaintiff:

Press Release:
"SONY'S NEW "DASH™" PERSONAL APPLICATION VIEWER OFFERS PERSONALIZED WEB EXPERIENCE AT A GLANCE
New product provides instant access to news, weather, Internet radio and other applications

LAS VEGAS (CES Booth #14200), Jan. 6, 2010 - Sony confirmed its commitment to providing consumers with innovative networked products

with the introduction of the new Dash™ personal Internet viewer.

Featuring a vivid 7-inch color touch screen (measured diagonally) and access to over 1,000 free Internet apps, including news, calendars, weather, sports, social networking and more, Dash utilizes an existing home wireless connection to continuously deliver Internet content to its viewers.

"In today's connected world, Sony continues to look for ways to help enhance consumers' entertainment experiences throughout the home" said Brennan Mullin, Sony Electronics' senior vice president of the personal imaging and audio business. "With Dash, we're empowering consumers with a fun, interactive way to stay connected with their news, entertainment, interests and ultimately, their lives."

By bundling favorite pieces of the Internet together, Dash provides always fresh, personalized content at a glance. The new product offers free access to more than 1,000 apps from Chumby Industries, Inc. as well as the robust audio and video content from Sony's Bravia™ Internet video platform, including YouTube™, Pandora® Internet radio, Epicurious, Crackle, Livestrong™, Blip.tv and much more.

Other content includes a NAVTEQ® app for easily accessible traffic updates on a customized route, and a Cozi™ app for simple management and synching of family calendars. Further, Sony Music Entertainment and Sony Pictures Entertainment will be contributing exclusive Dash apps for movie trailers, music videos, custom user themes and more, including an app from Dr. Oz offering daily health and exercise tips.

In addition, Sony Dash can run multiple sources of content simultaneously, so for example, Internet radio can be enjoyed while browsing through online photo albums. Or, the alarm clock can be set to play selected online videos from music, sports and other news feeds. The device also allows users to choose apps either directly from the device or online

through a PC, and new content for Dash will continue to be added moving forward.

Within the device, an internal accelerometer supports vertical flip, allowing for two optional viewing angles: upright, ideal for a table or nightstand; and tilted, perfect for a countertop. It also supports multiple user profiles and channels, allowing several members of the household to create and maintain their own customized view of the Internet.

The Dash personal Internet viewer also features built-in stereo speakers as well as a USB port for simple connection to a variety of external electronic devices. Additionally, a headphone output jack gives users the option to listen privately through headphones or through external speakers.

Sony's Dash will be available this April for about \$199 at www.sonystyle.com, Sony Style® retail stores and a variety of authorized dealers nationwide."

20. The representations that the Dash would "continuously deliver" and was "always fresh" were false.

21. The Dash, Model HID-C10, was first sold in late April 2010 at a list price of \$199. Online advertising touted the benefits of the SONY Dash, stating:

Get information and entertainment in your bedroom, kitchen, or office, without being tethered to your PC 1,500+ apps available to deliver weather, traffic, social networking, movies, music, and more, 7-inch touchscreen with gesture support and WVGA (800x480) pixel resolution, 802.11b/g Wi-Fi to easily connect to your wireless home network 500Mhz processor with 32kB I/D L2 cache; 256 MB, 667MHz DDR2 DRAM.

22. SONY introduced two updated versions of the Dash hardware in September 2011. The HID-B7 and HID-B70 refreshed the

hardware, with the HID-B70 adding a battery backup. This revision of the Dash device removed Netflix and YouTube streaming support. However, SONY's promotional materials touted the two new models as featuring:

Enhanced real-time, customizable, information delivery to any room in the home
Portability in HID-B70 model
On-device registration for easy, PC-free set up and activation in minutes
Basic Internet browser
For portability, the HID-B70 Dash model now features a built-in lithium ion battery, so the device can be easily transported from room to room. It is also available in three colors: Brown, slate blue and orange.

23. All three models touted a seven-inch LCD measured diagonally color touch screen, and utilize a wireless Internet connection to deliver real-time information. With full alarm functionality and access to more than 1,000 free apps, including Facebook™, news, sports, webcams and more, SONY promised that its Dash device provides any room with a robust information alarm clock, which would serve as an internet viewer, among other functionalities.

24. SONY also indicated in promotional materials that "Users can also easily play back Internet radio, such as Pandora® and SHOUTcast®, via the built-in speaker or the headphone/audio output. Popular photo sharing services like Flickr®, Photobucket™ and SONY's Personal Space™ application are also quickly accessible."

25. These representations were repeated to each Dash purchaser within the packaging materials accompanying the Dash product, which contained the following affirmative representations, which proved to be false:

- Stop searching for the latest news, weather, sports scores and social network updates. Dash streams playlists of personalized apps, as well as Internet radio, photos and video, through a vivid 7" touch screen. Connecting to your home wireless network, Dash delivers fresh, up-to-the-minute content, available at a glance. The 1,000-plus apps available for the Dash™ Personal Internet Viewer deliver the information and entertainment you want - weather, traffic, social networking, music & more - right to your kitchen, bedroom, living room, or office

Stream the web content you choose. It's always on, always fresh and available at a glance.

Access a variety of video services for online music and viral videos, full-length feature movies, and TV shows on the 7" Configuration LCD touch screen display.

Get complimentary access to the best Sony has to offer: movie trailers, minisodes, music videos, game trailers, and celebrity themes.

26. Plaintiff and the other Dash purchasers relied upon these representations that audio, video and other internet content would always be on, fresh and available at a glance.

27. Had Plaintiff and the other Dash purchasers been aware that Sony sold the product knowing it was manufactured with the ability to be remotely bricked, with the removal of all functionality of the Dash through a simple forced soft-ware update they would not have purchased the Dash or would have paid

substantially less than they paid. When they purchased their Dash Plaintiff and the Class reasonably assumed that the servers supporting the Dash would remain available to support the product.

28. The initial retail price of the HID-B7 Dash model was available in black for \$129.95.

29. The HID-B70 Dash model was also available in brown, slate blue and orange for \$169.95.

30. On March 14, 2015 the SONY Dash stopped supporting all streaming content, including Netflix, Pandora, Slacker, and YouTube, although the device continued to authenticate with SONY and act as an alarm clock. However, this service apparently returned on April 24, 2015. Then, in April 2017, SONY announced that it "will no longer support Dash devices and functionality will terminate" as of July 2017.

31. Sony released a firmware update that reached all Dashes that were in contact with the servers that supported the Dash and disconnected those Dash units from the servers. The servers that exclusively supported the Dash were subsequently shut down. But servers that supported devices in addition to the Dash, such as the Bravia internet video platform (BIV service), which was accessible on the Dash through which users could access content from third party service providers remained active. Users of other Sony products, and new Sony products coming to market could continue to access the BIV service but Dash owners could not.

32. Sony decided to disconnect the Dash from the servers in early 2017. Sony has asserted that they stopped providing support to the SONY Dash for financial reasons. Maintaining the servers needed for functionality of the Dash was not economical so SONY decided to simply brick the product, ignoring the promises made to the consumers who purchased this device. However, Sony has admitted in the limited discovery received thus far that the Bravia internet video platform remained accessible for consumers of other Sony products. On information and belief, Sony decided to utilize these servers to support existing products, and new products it was bringing to market but treated Dash purchasers differently by precluding their ability to access the BIV server. This conduct constitutes a lack of good faith, honesty in fact and observance of fair dealing.

33. It is anticipated that SONY will attempt to rely upon certain language contained in the End User License Agreement ("EULA") which came inside the box of the SONY Dash unit. The EULA can only be reviewed after you purchase the Dash, bring it home and take it out of the box. This EULA contains a provision which states:

"From time to time, Sony, its Affiliates, Third Party Licensors or other third parties may automatically update or otherwise modify the Software, for example, but not limited to for purposes of error connection, improvement of features, and enhancement of security features. Such updates or modifications may

change or delete the nature of features or other aspects of the Software, including but not limited to features you may rely upon. You hereby agree that such updates and modifications may occur at Sony's sole discretion, and that Sony may condition continued use of the Software upon your complete installation or acceptance of such updates or modifications."

A copy of the EULA is annexed hereto as Exhibit A.

34. In July 2017, SONY released a firmware update, version 1.7.1604. Users were required to press "OK" which installed the update in order to get beyond the first screen. In other words, a user could not make use of the device without installing the update. When a user clicked "ok" and permitted the update to install it destroyed all functionality resulting in "bricking" the product.

35. This update did not "correct errors", "improve features", or "protect security". It did not merely "change or delete" features. Rather, it completely destroyed all functionality of the product. The firmware update exceeded SONY's authorization to install updates.

Plaintiff's Experiences

36. On July 20, 2011, Plaintiff Grisafi purchased two SONY Dash units, both model HID-C10, from Amazon.com intending to give one of the units as a gift. He paid \$104.96 each, not including taxes, shipping and gift wrapping.

37. Grisafi had seen the Dash reviewed on several websites and was impressed with its versatility at the time. It was touted as a photo frame, internet radio, internet viewer, Facebook feed, Netflix, Hulu and YouTube viewer. It could also be used to check the weather report. With the promise that SONY would make 1,000 different "apps" available to purchasers, Grisafi jumped at the opportunity to purchase this product.

38. After Grisafi received his first Dash, he immediately set it up and tried out the many features. He registered the product with SONY as required. Registration is necessary to permit the user to manage the dashboard remotely. Grisafi was able to add or remove Apps from his dashboard. For example, but not by way of limitation, he could choose a news feed or weather application and it would appear on the face of the clock. Grisafi put this first Dash purchased in his bedroom at his family's vacation house.

39. Because he was so pleased with the first SONY Dash he purchased an additional HID-C10 for the apartment where he was living at the time.

40. Less than a year later, he noticed the newest version (HID-B70) was for sale on Woot.com for \$79.99. He purchased this model because it featured a backup battery which would function during a power failure. He moved the HID-C10 he had to his living room and replaced it with the HID-B70 which was next to his bed. Within several months, he purchased another HID-B70D on eBay. Thus,

Grisafi ultimately purchased a total of five Dash units. Four were registered to him and one was given as a gift.

41. Grisafi noticed that Netflix, Hulu, YouTube, and other streaming content ceased to function on March 15, 2015, at least for a time. The Dash still functioned as a programmable alarm clock and it could receive weather updates and news. The dashboard also could still be managed on SONY's servers.

42. Firmware version 1.7.1526 was released on March 24th, 2016 and Grisafi installed it successfully on the two HID-C10s he had.

43. Then on or about July 12th, 2017 SONY released firmware version 1.7.1604. Grisafi received notice of the update via a screen pop up which indicated that an update was available to download. He was unable to opt out of the update. Since he had no other option he touched "OK" and it downloaded and installed the update. When the update completed the device restarted to a screen that says "SONY" and the SONY light flashes at the bottom. That is the only thing that Grisafi's SONY Dash was able to do after installing the update; it had zero functionality. It could not power up and function normally, or even serve as an alarm clock, with or without dashboard app features. This is the definition of a device being "bricked."

44. Grisafi's HID-B70 is still functioning as a passive alarm clock but it is apparent that SONY has shut down their

servers. Thus, once that Dash experiences a power outage which results in its battery draining, it too will be rendered useless.

Dash Purchasers Complain

45. Grisafi's experience with the SONY Dash is typical of all Sony Dash purchasers, as reflected by customer complaints. Since the forced firmware update numerous users have complained about SONY's bricking the product, shutting down the servers and failing to offer an appropriate remedy to individuals who purchased the SONY Dash. A small sampling of these complaints is as follows:

Sony Dash another abandoned product turns into a brick

I have used the Sony Dash products for years. It was a touch screen device that had apps. It worked well and since it was tied to Sony servers it turned into a brick today when Sony announced they will no longer support it. Boy that sucks. I have two perfectly working touch screen devices that won't do squat without the Sony servers. You think could have opened it up to let us use 3rd party services for weather and such.

Sony could have opened up the hardware to not rely on Sony servers to keep it going. Total BS what they did.

I have 3 that are bricked, and then there are all ones I've given to family and friends as gifts. Sony could have easily fixed the Dash to be a standalone device. The only reason it had to connect to the Sony servers was to download the control panel for apps. The clock, alarm clock, accuweather, picture viewer, and usb stick music player functions were already imbedded into the

firmware/software. The clock time and weather was retrieved from the internet, not Sony. All Sony needed to do was provide a firmware/software update that removed the control panel along with a few other functions, and rewrite it to eliminate server authorization, and connect to the users internet to collect time and weather information. At least it would still function as a bedside alarm clock with auto dimmer and weather information that would play pictures and music from a USB stick. What Sony did was atrocious, and so environmentally irresponsible. I can't image how many of these things are going into the trash all around the world over the next few days.

<http://www.dslreports.com/forum/r31509480-Sony-Dash-another-abandoned-product-turns-into-a-brick>

*1.0 out of 5 stars*It WAS a Great Clock-Until Sony Put it to Death

ByDavid S.on August 2, 2017

Package Type: Standard Packaging

Sony killed it with the latest update. My clock no longer works, and they no longer support it. DO NOT BUY!

RIP HIDC10.

*1.0 out of 5 stars*Device no longer supported

ByNoah Tallon July 23, 2017

Package Type: Standard Packaging

As of July 2017 Sony has disabled this device it no longer functions. Do not buy!

*2.0 out of 5 stars*I miss you ... WAS the Best Alarm Clock EVER

ByAmazon Shopper Joeon July 17, 2017

Package Type: Standard Packaging

This WAS a 5 STAR device until Sony decided to kill it. i LOVED this thing... sort of a friend to tell you the weather and such. It was just soo nice. But then Sony sent an "update" makes it totally non-operational (even as an alarm clock not functional). Instead the screen says Sony and the light that says Sony beneath it blinks. As noted in other reviews, just call

(239) 245-6374 Sony will offer you a clock radio or a BT Speaker with your Dash's serial number..... and a picture showing the model and serial number... when you email them. The clock offered to me was the ICF-C1 and the speaker was SRS-XB10. I had paid \$200 for my Dash... hardly seems fair. I am very unhappy for Sony pulling the plug. I am hoping that someone from the CHUMBY community finds a way to port either the CHUMBY system or someone finds a way to put an ANDROID system on this and brings it back to life. I would pay good money if someone could bring life back to this device. It has a certain cult following as the worlds best alarm clock. Amazon... if you are listening... here is a HUGE nice opportunity for you to adapt your brand new Amazon Echo Show to replace this old but loyal following of Sony Dash folks upset with Sony and looking for a new 'device' that welcomes them away every day.

1.0 out of 5 stars Brilliant strategy. Now I will never bay anything sony

By *Quality Count* on July 16, 2017

Package Type: Standard Packaging

Thanks SONY for abandoning your Dash customers. Brilliant strategy. Now I will never buy anything "sony." AMAZON SHOULD BAN THEIR PRODUCTS AND STAND WITH US.

Comment | Was this review helpful to you?

1.0 out of 5 stars It was awesome until Sony released an update that removed all functionality ...

By *Matt Pon* on July 15, 2017

Package Type: Standard Packaging | *Verified Purchase*

It was awesome until Sony released an update that removed all functionality except the alarm clock function. I bought two of these and now they're pretty much useless. Sony's support sucks for nearly every product I've bought from them in the past. I have stopped purchahing Sony products and I recommend you do the same.

1.0 out of 5 stars Update appears covering most of screen that you can't get rid of and when you do update device is useless. Sony says it has stopped supporting this item

By Frankon July 15, 2017

Package Type: Standard Packaging | Verified Purchase

Beware this product. Update appears covering most of screen that you can't get rid of and when you do update device is useless. Sony says it has stopped supporting this item. Support said you can call and get an alarm clock .

https://www.amazon.com/Sony-HIDC10-Personal-Discontinued-Manufacturer/product-reviews/B00375MPA8/ref=cm_cr_dp_d_ttl?ie=UTF8&reviewerType=all_reviews&sortBy=recent#R1SDCZWQ

VI. RULE 9(b) ALLEGATIONS

46. Plaintiff makes the following specific fraud allegations with as much specificity as possible absent access to the information necessarily available only to SONY:

a. Who: SONY, including but not limited to SONY's senior vice president of the personal imaging and audio business, Brennan Mullin, who misrepresented that the Dash would always be fresh and always be connected, omitted to disclose to its customers that the Dash was designed to have the ability to be bricked at any time through a forced software update, and engaged in an unconscionable commercial practice by deliberately precluding Dash owners from accessing the BIV server while owners of other Sony products could continue to access the BIV server. Plaintiff is unaware of, and therefore unable to identify, the true names

and identities of all those individuals at SONY responsible for these actions.

b. What: Sony made affirmative misrepresentations that Dash owners would have the ability to utilize the Sony servers and access the internet for numerous functions. Sony informed each Dash owner that they could "Stream the web content you choose. It's always on, always fresh, and available at a glance". That was a false assertion. Sony did not advise owners that SONY designed the Dash with the ability to force a software update that would brick the Dash and enable SONY to shut down the servers simply because SONY was not realizing its expected profits. There was nothing functionally wrong with the Dash when SONY forced the software update. Rather it was a deliberate action designed to destroy the ability to stream web content and access the otherwise fully functioning BIV servers.

SONY's engaging in deliberate, arbitrary conduct to destroy all utility of the Dash by forcibly disconnecting it from all servers, including the BIV server otherwise available to SONY customers using other web-based products, constitutes unconscionable commercial conduct. SONY knew when it first sold the Dash that it had the ability to brick the product at its discretion. However, Sony failed to disclose that it had the

ability to remove all the operational features of the Dash through this remote access.

c. When: Beginning no later than January 2010, when Brennan Mullin, SONY's senior Vice President touted the benefits of the Sony Dash and issued an official press release, and then later when SONY temporarily stopped supporting streaming content in March 14, 2015 and began receiving consumer complaints about problems with the product. Although Sony admits the decision to stop supporting the Dash was made in early 2017, SONY concealed its intent to stop supporting the Dash until April 2017 when it advised that it would stop supporting the device and functionality as of July 2017. During these three months, SONY continued to sell the device to unknowing consumers.

d. Where: SONY made affirmative misrepresentations in its product packaging and the January 2010 press release SONY released at the Las Vegas Consumer Electronics Show. Additionally, SONY concealed this material information in every communication it had with Plaintiff and the Class and Subclass until the April 2017 communication, which was made long after the unconscionably short limited warranty expired.

e. How: SONY concealed this material information by not disclosing it to Plaintiff, the Class, Subclasses or anyone in the chain of distribution at any time or place or in any manner, even though Sony knew it had the ability to render the Dash

prematurely obsolete and knew this fact would be important to a reasonable consumer, and even though its omissions with regard to SONY's ability to brick the Dash, and consequent premature failures of the Dash were contrary to its representations about the device. Sony falsely represented on the box the Dash came in and in promotional material that the device would serve as an "internet viewer" that the Dash was always on and always fresh but these were affirmative misrepresentations. This functionality was unreasonably and arbitrarily short-lived.

f. Why: SONY concealed this material information for the purpose of inducing Plaintiff and the Class and sub-class to purchase the SONY Dash at full price rather than purchasing competitors' similar products or paying SONY less for the Dashes, given their limited and short-lived utility. If SONY had disclosed that SONY had the ability to brick the Dash at Sony's discretion, Plaintiff and the Class and sub-class (and reasonable consumers) would not have bought the SONY Dashes, or would have paid less for them.

VII. TOLLING OF STATUTES OF LIMITATION

47. SONY's active and knowing concealment of the intent to brick the Dash and shut down the servers as soon as the product appeared not profitable by SONY since the product was first introduced in April 2010, and willfully false and misleading statements regarding the multiple uses of the product as a personal

application viewer, results in the tolling of any applicable statute(s) of limitation.

48. Plaintiff and Class and Subclass Members could not have reasonably discovered SONY's true intentions until July 2017 when the device was bricked.

49. SONY's active concealment of, and breach of its duty to disclose the truth about its intent to brick the SONY Dash tolls any applicable statute(s) of limitations.

VIII. CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action on behalf of himself and all other persons similarly situated, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the following class and subclass (collectively, the "Classes"):

The Nationwide Class

51. All persons or entities in the United States who own or have owned a SONY Dash as of July 2017.

The New Jersey Subclass

52. All persons or entities in New Jersey who own or have owned a SONY Dash as of July 2017.

Excluded from all Classes

53. Excluded from the Classes are: (a) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns, and

successors; (b) the judge to whom this case is assigned and any member of the judge's immediate family.

Numerosity/Impracticability of Joinder/Ascertainability:

54. The members of the Class are so numerous that joinder of all members would be impracticable. The Class is believed to include thousands of members. The Class is composed of an easily ascertainable, self-identifying set of individuals and entities that purchased the Dash. Due to the fact that all purchasers had to register their Dash to enable them to access the servers, SONY has the contact information for each class member. The precise number of Class members can be ascertained by reviewing documents in Defendant's possession, custody, and control.

Commonality and Predominance:

55. There are common questions of law and fact that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the SONY Dash was improperly bricked;
- b. Whether SONY violated the consumer protection laws in the New Jersey Consumer Fraud Act (hereinafter, the "CFA"), N.J.S.A. 56:8-1, et seq., and/or the consumer protection laws of other states.
- c. Whether SONY's conduct violates warranty laws, and other laws as asserted herein;
- d. Whether, as a result of SONY's omissions and concealments of material facts related to its intent to render the Dash useless prematurely, Plaintiff and the

other members of the Class have suffered ascertainable losses, and whether Plaintiff and the other members of the Class are entitled to monetary damages and/or other remedies, and if so the nature of any such relief;

- e. Whether SONY's acts and/or omissions entitle Plaintiff and the other members of the Class to treble damages, attorneys' fees, prejudgment interest and cost of suit.
- f. Whether the Consumer Fraud and Abuse Act was violated by SONY's acts.
- g. Whether SONY's EULA violated the provisions of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act ("NJ TCCWNA") and Grisafi and the class are aggrieved consumers.
- h. Whether SONY has committed trespass to chattels.
- i. Whether SONY has been unjustly enriched through the sale of the SONY Dashes.

Typicality:

56. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and the other members of the Class have suffered similar injury by the same wrongful practices by SONY. The claims of Plaintiff and the other members of the Class all arise from the same wrongful practices and course of conduct, and are based on the same legal and remedial theories.

Adequacy Of Representation:

57. Plaintiff will fully and adequately assert and protect the interests of the members of the Class, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiff nor his attorneys have any interests that are contrary to or conflicting with the members of the Class.

Superiority Of Class Action And Impracticability Of Individual Actions:

58. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is not economically feasible and is procedurally impracticable. While the aggregate damages sustained by the members of the Class are in the millions of dollars, and are no less than five million dollars, upon information and belief, the individual damages incurred by each member of the Class resulting from SONY's wrongful course of conduct are too small to warrant the expense of individual suits. The likelihood of individual members of the Class prosecuting their own separate claims is remote, and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, SONY has acted or

refused to act on grounds generally applicable to the members of the Class and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

IX. CLAIMS FOR RELIEF

FIRST COUNT

(Violation of the Computer Fraud and Abuse Act)

(18 U.S.C. §1030 et seq.)

59. Plaintiff on behalf of himself and all others similarly situated, incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

60. This claim is brought on behalf of the Nationwide Class.

61. Grisafi's and the class members' SONY Dash units constituted protected computers within the meaning of the computer Fraud and Abuse Act, 18 U.S.C. §1030.

62. Defendant intentionally transmitted the firmware update version 1.7.1604 to all SONY Dash owners and did so in a manner that required that the Dash owners install the updates to get beyond the opening screen.

63. The updated software was intended to cause damage to the SONY Dash operating system so that the SONY Dash would be rendered nonfunctional, i.e. bricked.

64. SONY Dash owners did not provide SONY with authorization to access their SONY Dash units for purposes of destroying the functionality of the SONY Dash units.

65. The firmware/software update SONY intentionally transmitted to the SONY Dash in fact caused damage to it, resulting in a bricked product.

66. The firmware update damaged all SONY Dash units sold in the United States and caused aggregate damages in excess of \$5,000.

SECOND COUNT

(Violation of the New Jersey Consumer Fraud Act)

N.J.S.A. § 56:8-2, et seq.)

67. Plaintiff on behalf of himself and all others similarly situated, incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

68. Plaintiff and the members of the class are consumers within the meaning of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2, or comparable statutes.

69. The New Jersey Consumer Fraud Act ("CFA") prohibits a person from engaging in any unfair practice, making any false, deceptive or misleading representation or omission with intent that others rely on it.

70. More specifically, this statute provides that: "The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment suppression or omission, in connection with the sale or advertisement of any merchandise. . . or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice. . . ."

71. Defendant has violated the CFA by engaging in affirmative misrepresentations, knowing omissions, and unconscionable commercial practices.

Affirmative Misrepresentations

72. Sony engaged in unfair, false, deceptive and misleading practices in representing on the packaging received by all Dash purchasers that owners could "Stream the web content you choose. It's always on, always fresh and available at a glance." The packaging on the box indicated that it was a "personal application viewer" and was "wi-fi certified." Grisafi relied upon these representations, as well as, the articles he read on the internet which touted that the Dash could be used as a photo frame, internet radio, Facebook feed, watch Netflix, Hulu, Youtube, and check the weather among many other features. Sony's own Press Release dated

January 6, 2010, also stated that the Dash would "continuously deliver" and was "always fresh." Articles quoting Sony's senior vice president, Brennan Mullin, reinforced the impression that Sony's servers would remain operational so that the functionality of the Dash could be utilized without an arbitrary shut-down at the whim of SONY.

73. However, SONY designed the product so that it could force a firmware update which would brick the Dash when it unilaterally determined that maintaining the servers, required if Dash was to fulfill its advertised functions, was no longer profitable. (Although other servers used by the Dash on the BIV system remained active, although inaccessible to Dash owners after the firmware update.)

74. SONY knew before the Dash was available for purchase that it had the ability to use a software update to destroy functionality because another SONY affiliate used the same procedure the year the Dash first went to market.

75. More specifically, Sony used a software update to disable one of the important functionalities of the PS3 after the dual functionality model was on the market for only four years. In 2006, defendant Sony Computer Entertainment America LLC introduced the PS3 gaming system which Sony promoted as having capabilities beyond those of prior game consoles, including specifically an "Other OS" feature, which enabled users to install Linux or other

operating systems and use the devices as personal computers. In 2010, the same year that SONY introduced the Dash, SONY released a software update for the PS3 that, among other things, intentionally disabled the Other OS feature. Although PS3 owners had the choice of declining to install the software update, without it they would no longer have access to certain online features and entertainment, and would be unable to play any new games that might require the update to function. As detailed in an article by Mike Masnick, in the online forum known as Techdirt, on March 31, 2010, Sony retroactively took away a feature that it sold to people who bought the PS3. In describing what happened, the article provides:

"The backstory is that Sony provided the Other OS feature in order to support IBM's Cell Project, which produced the PS3's CPU and made it practical to use PS3 consoles as compute nodes for a scientific supercomputer. The U.S. Army did just that, buying more than 2,000 OS3s to build a supercomputer. Lots of hobbyists also made use of the Other OS feature, using it to write their own games and creatively repurpose their PS3s. Recently, however a hobbyist named Geohot announced that he was able to use the Other OS feature along with a bit of soldering in a manner that gave him more control over the PS3 hardware than Sony had intended. Sony responded with the "upgrade" that removes the Other OS feature."

76. Although the action taken with respect to the PS3 related to only part of the device, and was allegedly not based upon Sony's profit motive, this partial bricking of a different Sony product just as the Dash was being released to the market is evidence that Sony had the technical ability to brick a product, and designed the Dash to have this feature without advising its purchasers that the product purchasers purchased to surf the internet would be prematurely discontinued at the whim of Sony. Had plaintiff and the Class and sub-class been made aware that Sony could brick the product they would not have purchased it, or would have paid substantially less.

77. Plaintiff and the Class and sub-class have suffered an ascertainable loss as a result of the misrepresentations.

Intentional Omission

78. SONY was aware of what was necessary to manufacture a web-based product with the capacity to force a software upgrade that would destroy all or part of the functionality of one of its devices since the PS3 was built with this ability in 2006 and the partial bricking was effectuated with respect to one feature in 2010.

79. Sony omitted this fact from its packaging and promotional materials, such as its press release, and never disclosed this ability to potential purchasers prior to their making the purchase. This ability was known to SONY when it

marketed the Dash to Plaintiff and all consumers but was unknown to Plaintiff and all consumers when they decided to purchase the Dash. SONY did not inform Plaintiff or the members of the Class that it had designed the product so that it had the ability to brick the product at will and concealed this fact from Plaintiff and the Class.

80. SONY's firmware update in fact caused the SONY Dash to brick on a date pre-determined by SONY enabling SONY to shut down its servers and wash its hands of the product solely because SONY found the product was no longer profitable.

81. Plaintiff and the Class would not have purchased the SONY Dash if they knew that Sony built the Dash with the ability to brick and render useless, a product which was otherwise fully operational, after purchasers owned it for just a few years.

82. Alternatively, Plaintiff and the class would have paid far less for the SONY Dash if they knew that its useable lifespan could be deliberately shortened at the whim of SONY.

83. Failing to inform purchasers of the Dash of this innate ability to force a firmware update to destroy all functionality constituted an omission of material information which caused an ascertainable loss to Plaintiff and the Class.

Unconscionable Commercial Practice

84. Additionally, the intentional bricking of the product constitutes an affirmative act which is an unconscionable

commercial practice which lacks good faith, honesty in fact and observance of fair dealing in the performance of its contract.

85. Through discovery it has been determined that the firmware update Sony forced Dash owners to install not only disconnected the Dash from the servers specifically dedicated to the Dash but also disconnected the Dash from servers that supported devices in addition to the Dash, such as the Bravia internet video platform (BIV service). Dash users had been able access the BIV service. Although the Dash servers were shut down, the BIV service remained active. Users of other Sony products, and new Sony products coming to market could continue to access the BIV service but Dash owners could not. It was clearly unfair to cut off the Dash owners ability to access the BIV service when this service remained available to other Sony product owners. There was no business justification for doing so.

86. Defendant's unconscionable, unfair and deceptive conduct proximately caused Plaintiff and the Class to be injured and suffer an ascertainable loss. Plaintiff would not have paid as much for the several Dashes he purchased if he knew that Sony had the ability to intentionally destroy all functionality within a few years of purchase. This diminution in value can be determined on a class-wide basis.

THIRD COUNT

(Breach of Express Warranty)

DISMISSED BY COURT

FOURTH COUNT

(Breach of Implied Warranty)

DISMISSED BY THE COURT

FIFTH COUNT

(Breach of Written Warranty Under the
Magnuson-Moss Warranty Act, 15 U.S.C. § 230 et seq.)

DISMISSED BY THE COURT

SIXTH COUNT

(Violation of the TCCWNA)

(N.J.S.A. 56:12-15 et seq)

DISMISSED BY THE COURT

SEVENTH COUNT

(Trespass to Chattels)

110. Plaintiff, on behalf of himself and all others similarly situated, incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

111. On July 1, 2017 and at all relevant times prior thereto Plaintiff and those similarly situated were the owners of and in possession of working SONY Dash units. These SONY Dash units each cost between \$100 to \$200 at retail.

120. On July 12, 2017 defendant unlawfully took from

plaintiff's possession and the possession of all class members an operational SONY Dash unit through its forced firmware update, leaving plaintiff and the class with a worthless brick.

121. By reason of the unlawful taking of the property, plaintiff and the class has each sustained damages consisting of the fair market value of the property in the amount of \$100.

EIGHTH COUNT

(Unjust Enrichment)

DISMISSED BY THE COURT

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and on behalf of the Nationwide Class and New Jersey Subclass, prays for judgment against SONY granting the following relief:

1. Certification of the proposed Nationwide Class, and New Jersey Subclass, and appointing Plaintiff to represent the Classes and Plaintiff's counsel as class counsel;

2. All recoverable compensatory, statutory and other damages sustained by Plaintiff and the other members of the Nationwide Class and New Jersey Subclass;

3. Restitution and disgorgement of all amounts obtained by SONY as a result of its misconduct, together with interest thereon, from the date of payment, to the victims of such violations;

4. Actual, treble, and/or statutory damages for injuries suffered by Plaintiff and the other members of the Classes in the maximum amount permitted by applicable law;

5. A refund in the amount of the MSRP to each SONY Dash purchaser.

6. Statutory pre-judgment and post-judgment interest on the Class damages;

7. Injunctive and declaratory relief;

8. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and

9. Such other relief as the Court may deem just and proper.

XI. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all causes of action so triable.

DATED: May 19, 2020

NAGEL RICE, LLP
*Attorneys for Plaintiff and
the Putative Class*

By: s/ Bruce H. Nagel

Bruce H. Nagel
Randee M. Matloff
103 Eisenhower Parkway
Roseland, New Jersey 07068
973-618-0400

bnagel@nagelrice.com
rmatloff@nagelrice.com