

**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=Cj0KCQiApY6BBhCsARIsAOI_Gja1LXOkHkoMfGrPxigq4gCYK13ACQI-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.

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