
EXHIBIT D

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SONY COMPUTER ENTERTAINMENT
7 AMERICA LLC

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12
13 In re SONY PS3 "OTHER OS"
14 LITIGATION

CASE NO. CV-10-1811 RS (EMC)

15 **NOTICE OF DEPOSITION OF PLAINTIFF**
16 **ANTAL HERZ AND REQUEST FOR**
17 **PRODUCTION OF DOCUMENTS**

18 Date: November 5, 2010
19 Time: 10:00 A.M.
20 Location: DLA Piper LLP (US)
21 555 Mission Street, Ste. 2400
22 San Francisco, CA 94105



1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, on November 5, 2010, at
3 10:00 a.m., at the offices of DLA Piper LLP (US), 555 Mission Street, Suite 2400, San Francisco,
4 California 94105, defendant Sony Computer Entertainment America LLC ("SCEA") will take
5 the deposition of plaintiff Antal Herz, upon oral examination before a certified shorthand reporter
6 duly authorized by law to administer oaths.

7 PLEASE TAKE FURTHER NOTICE that the transcription of Mr. Herz's deposition
8 testimony may include the instant visual display of testimony. In addition to recording his
9 testimony by stenographic means, SCEA also reserves the right to record Mr. Herz's testimony
10 by videotape. SCEA also reserves the right to use the videotape of the deposition at trial.

11 PLEASE TAKE FURTHER NOTICE that prior to the date, time, and place of the taking
12 of the above-described deposition, and pursuant to Fed. R. Civ. P. 34, SCEA will and does hereby
13 request the production of all of the below-listed DOCUMENTS for purposes of review,
14 inspection, analysis, copying as follows:

15 **DEFINITIONS AND INSTRUCTIONS**

16 The following definitions and instructions apply to these requests for production:

- 17 1. The terms "ALL" and "ANY" shall be given their broadest possible meaning.
- 18 2. "AND" as well as "OR" shall be construed disjunctively or conjunctively as
19 necessary to bring within the scope of any request any information which might otherwise be
20 construed to be outside its scope.
- 21 3. "COMMUNICATION" or "COMMUNICATIONS" refers to any form of
22 interpersonal communication, whether written or oral, including, but not limited to, meetings,
23 telephone conversations, voicemail, correspondence, memoranda, contracts, agreements and/or
24 electronic mail, instant messaging, e-messaging, and any other form of electronic communication,
25 including electronic communications on the Internet, intended to or actually conveying
26 information or data.
- 27 4. "CONCERNING" means and includes concerning, relating to, respecting,
28 referring to, summarizing, digesting, embodying, reflecting, establishing, tending to establish,

1 derogating from evidencing, comprising, connected with, responding to, disagreeing with,
2 showing, supporting, refuting, describing, analyzing, representing, constituting, pertaining to or
3 being in any way relevant to the given subject.

4 5. "CONSOLIDATED COMPLAINT" means the Consolidated Class Action
5 Complaint filed on or about July 30, 2010 in the above-captioned consolidated action.

6 6. "DESIGNATED TIME PERIOD" means the time from January 1, 2006 to the
7 present. All requests for production herein relate to the DESIGNATED TIME PERIOD unless
8 otherwise specified.

9 7. "DOCUMENT" means any writing as defined in Federal Rule 1001 of the Federal
10 Rules of Evidence, and includes written, recorded, filmed, or graphic matter, whether produced or
11 reproduced on papers, cards, tapes, film, electronic, facsimile, computer storage device or any
12 other media, and includes, but is not limited to, memoranda, notes, minutes, records, photographs,
13 correspondence, telegraphs, telexes, diaries, bookkeeping entries, financial statements, tax
14 returns, checks, check stubs, receipts, reports, studies, charts, graphs, emails, statements,
15 notebooks, handwritten notes, applications, agreements, books, pamphlets, leaflets, appointment
16 calendars, work papers, notes, records and recordings of oral communications, and also includes,
17 but it not limited to, originals and all copies which are different in any way from the original,
18 whether by interlineation, receipt stamp, notation, indication of copies sent or received, or
19 otherwise, and drafts.

20 8. "PERSON" refers to the plural as well as the singular, and means any natural
21 person, firm, association, partnership, corporation, public entity, or any other form of legal entity
22 or governmental body unless the context indicates otherwise.

23 9. "PERSONAL COMPUTER" means any notebook, desktop, or tablet personal
24 computer, but for purposes of these requests for production only, does not include the
25 PlayStation®3 computer entertainment system.

26 10. "PS3" means the PlayStation®3 computer entertainment system.

27 11. "SCEA" means defendant Sony Computer Entertainment America LLC.

28 12. "YOU" or "YOUR" or "YOURSELF" or "HERZ" means plaintiff Antal Herz

1 and/or any PERSON acting on his behalf, including, but not limited to, his agents, employees,
2 attorneys, accountants, investigators, partners, representatives, and insurance companies. The
3 phrase "Antal Herz," however, shall refer only to Antal Herz and not to those acting on his
4 behalf.

5 13. If YOU deem any term used in these Requests for Production to be vague or
6 ambiguous, the term shall be accorded its broadest possible meaning. If YOU object to any
7 Request for Production as using a term that is vague or ambiguous, YOU shall identify its
8 understanding of the meaning of such term in its response.

9 14. If YOU claim that any of the DOCUMENTS demanded below are privileged or if
10 you withhold any of the DOCUMENTS demanded below on any other basis, YOU shall produce
11 a privilege log which complies with federal law and clearly identifies the document(s) and YOUR
12 ground(s) for not producing. In addition, any redaction of DOCUMENTS YOU produce shall be
13 clearly indicated on the face of the document, and the document shall be listed in accordance with
14 this Paragraph.

15 **REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 ANY and ALL DOCUMENTS CONCERNING Sony, SCEA, and/or the PS3.

18 **REQUEST FOR PRODUCTION NO. 2:**

19 ANY and ALL DOCUMENTS CONCERNING COMMUNICATIONS YOU have made,
20 read, seen, sent, received, viewed, or heard CONCERNING SCEA; the PS3, including any hack
21 or "jailbreak" of the PS3; or this litigation, including, but not limited to, ANY and ALL
22 DOCUMENTS CONCERNING COMMUNICATIONS made in public or private, in writing or
23 electronic, including anywhere on the Internet.

24 **REQUEST FOR PRODUCTION NO. 3:**

25 ANY and ALL PS3s that YOU purchased, received, or otherwise acquired, including, but
26 not limited to, the PS3 referenced in Paragraph 14 of the CONSOLIDATED COMPLAINT.

27 **REQUEST FOR PRODUCTION NO. 4:**

28 ANY and ALL DOCUMENTS CONCERNING the purchase, receipt and/or acquisition

1 of each PS3 to be identified and produced in response to Request Number 3, including, but not
2 limited to purchase orders, bills of sale, invoices, credit card receipts, cancelled checks and
3 money orders.

4 **REQUEST FOR PRODUCTION NO. 5:**

5 ANY and ALL DOCUMENTS and things that, at the time of purchase, receipt and/or
6 acquisition, accompanied each PS3 to be identified and produced in response to Request Number
7 3, including, but not limited to, boxes, containers, packaging materials, instruction manuals or
8 pamphlets, papers, inserts, promotional materials, disclaimers, warranty cards, reports, brochures,
9 schematics, customer service information, graphics, pictures, cables, controllers, connectors,
10 remote control devices, protective covering, Compact Disc, Digital Versatile Disc, Blu-ray™
11 Disc, and/or ANY other writings, hardware, software and/or peripherals.

12 **REQUEST FOR PRODUCTION NO. 6:**

13 ANY and ALL DOCUMENTS and/or things not responsive to Request Number 3
14 CONCERNING ANY data, game, program, operating system, application, file, hard drive,
15 memory storage device, Internet browser, mouse, printer, television, cable, wireless network,
16 hardware, firmware, peripheral, monitor, keyboard, Compact Disc, Digital Versatile Disc, Blu-
17 ray™ Disc, and/or software code that HERZ authored, created, used with, connected to, installed
18 on, downloaded to, backed up to, backed up from, imaged and/or uninstalled on each PS3 to be
19 identified and produced in response to Request Number 3 that did not accompany each PS3 at the
20 time of purchase, receipt and/or acquisition.

21 **REQUEST FOR PRODUCTION NO. 7:**

22 A forensic copy of the hard drive for ANY and ALL PERSONAL COMPUTERS used by
23 Antal Herz during the DESIGNATED PERIOD, including, but not limited to, any used by Antal
24 Herz at his place of residence and/or place of business.

25 **REQUEST FOR PRODUCTION NO. 8:**

26 ANY and ALL DOCUMENTS CONCERNING the purchase, receipt and/or acquisition
27 of ANY and ALL PERSONAL COMPUTERS in Antal Herz's possession, custody or control,
28 including, but not limited to, any used by Antal Herz at his place of residence and/or place of

1 business during the DESIGNATED TIME PERIOD, including, but not limited to purchase
2 orders, bills of sale, invoices, credit card receipts, cancelled checks and money orders.

3 **REQUEST FOR PRODUCTION NO. 9:**

4 ANY and ALL DOCUMENTS CONCERNING agreements you signed, affirmed, or
5 otherwise consented to CONCERNING YOUR use of each PS3 identified and produced in
6 response to Request Number 3, including, but not limited, ANY and ALL DOCUMENTS
7 CONCERNING warranties, license agreements, and terms of use.

8 **REQUEST FOR PRODUCTION NO. 10:**

9 ANY and ALL advertisements, marketing, promotion literature, DOCUMENTS and/or
10 COMMUNICATIONS which YOU contend are “false and/or misleading” as alleged in Paragraph
11 141 of the CONSOLIDATED COMPLAINT.

12 **REQUEST FOR PRODUCTION NO. 11:**

13 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 2 of the
14 CONSOLIDATED COMPLAINT that SCEA “advertised the PS3’s ‘Other OS’ feature as an
15 essential and important characteristic.”

16 **REQUEST FOR PRODUCTION NO. 12:**

17 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 4 of the
18 CONSOLIDATED COMPLAINT that “Defendant could have taken other less intrusive or
19 extreme measures, other than disabling the ‘Other OS’ feature, to address its purported ‘security’
20 concerns.”

21 **REQUEST FOR PRODUCTION NO. 13:**

22 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 4 of the
23 CONSOLIDATED COMPLAINT that “Defendant’s removal of the ‘Other OS’ feature
24 eviscerated one of the PS3’s primary purposes, *i.e.*, its use as a personal computer.”

25 **REQUEST FOR PRODUCTION NO. 14:**

26 ANY and ALL DOCUMENTS that Antal Herz relied upon in purchasing, receiving or
27 acquiring any PS3, including but not limited to, ANY and ALL DOCUMENTS CONCERNING
28 YOUR allegations in Paragraph 14 of the CONSOLIDATED COMPLAINT that “[b]efore

1 purchasing the PS3, Mr. Herz performed extensive research on the Internet. Among other things,
2 Mr. Herz reviewed and relied on the statements on Defendant's website with regard to the PS3's
3 'Other OS' feature, as well as the PS3's other advertised features such as the ability to access the
4 PSN, play video games, watch movies, and listen to music, among other things" and
5 "Defendant's representations about the PS3's features, including the 'Other OS' feature, played a
6 substantial factor in influencing Plaintiff's decision to purchase a PS3 over the Xbox 360 and
7 Wii."

8 **REQUEST FOR PRODUCTION NO. 15:**

9 ANY and ALL DOCUMENTS CONCERNING Antal Herz's use of each PS3 to be
10 identified and produced in response to Request Number 3, including, but not limited to, ANY and
11 ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 14 of the
12 CONSOLIDATED COMPLAINT that "[Antal Herz] uses the PS3 for personal, family and
13 household uses" and "also extensively used his PS3 as a computer, including to browse the
14 Internet, run word processor software, spreadsheet software, email software, other productivity
15 applications, and make his own programs."

16 **REQUEST FOR PRODUCTION NO. 16:**

17 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 48 of the
18 CONSOLIDATED COMPLAINT that "[t]he 'Other OS' function was extremely valuable to PS3
19 purchasers."

20 **REQUEST FOR PRODUCTION NO. 17:**

21 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 56 of the
22 CONSOLIDATED COMPLAINT that "Defendant did not adequately notify its customers that all
23 such data would be lost once they installed the update."

24 **REQUEST FOR PRODUCTION NO. 18:**

25 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 58 of the
26 CONSOLIDATED COMPLAINT that "[m]any users purchased peripheral devices specifically
27 for use with the 'Other OS' function, such as wireless keyboards and mice and external hard
28 drives. Such devices are rendered superfluous to users that install Update 3.21."

1 **REQUEST FOR PRODUCTION NO. 19:**

2 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 59 of the
3 CONSOLIDATED COMPLAINT that “[u]sers who chose not to install Update 3.21 were also
4 damaged in that they lost access to many attributes of PS3 (sic) including their PSN purchases
5 other than gaming. For example, Defendant offers Qore, an online service that offers a variety of
6 content and news concerning PS3 functions. Users pay \$24.99 for an annual subscription.
7 However, users that purchased Qore prior to the release of Update 3.21 and who did not install
8 the update were denied the benefit of their annual subscription. Similarly, users who do not
9 install Update 3.21 lose access to any prepaid PSN account balances.”

10 **REQUEST FOR PRODUCTION NO. 20:**

11 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 79 of the
12 CONSOLIDATED COMPLAINT that “Defendant expressly warranted via its advertising,
13 statements, brochures, website information, public statements, owner’s manuals, and other
14 representations that the functionality of the PS3 would include both the ‘Other OS’ and the
15 various other advertised functions.”

16 **REQUEST FOR PRODUCTION NO. 21:**

17 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 105 of the
18 CONSOLIDATED COMPLAINT that “[b]efore purchasing the PS3, Plaintiffs each reviewed and
19 relied on Defendant’s affirmative representations about the PS3’s features and omissions of
20 material facts, including that Defendant would disable the ‘Other OS’ feature.”

21 **REQUEST FOR PRODUCTION NO. 22:**

22 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 107 of the
23 CONSOLIDATED COMPLAINT that “Defendant failed to adequately disclose, at the time of
24 purchase, that it might disable the ‘Other OS’ feature.”

25 **REQUEST FOR PRODUCTION NO. 23:**

26 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 114 of the
27 CONSOLIDATED COMPLAINT that “Defendant also violated Civil Code §1770(19) by
28 inserting one or more unconscionable provisions into a contract.”

1 **REQUEST FOR PRODUCTION NO. 24:**

2 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 165 of the
3 CONSOLIDATED COMPLAINT that “[b]y purchasing a PS3, Plaintiffs and each member of the
4 Class became owners of their PS3 and all of their PS3’s features. Thus, the PS3’s features,
5 including the ‘Other OS’ feature, which was designed, marketed, and built-in to the PS3, were
6 Plaintiffs’ and the Class’s property.”

7 **REQUEST FOR PRODUCTION NO. 25:**

8 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 8 of the
9 CONSOLIDATED COMPLAINT that “Plaintiffs have suffered injury in fact and have lost
10 money and property as a direct result of Defendant’s acts,”

11 **REQUEST FOR PRODUCTION NO. 26:**

12 ANY and ALL COMMUNICATIONS with, between or among ANY PERSON, including
13 but not limited to members of the class you propose in Paragraph 70 of the CONSOLIDATED
14 COMPLAINT, that YOU have seen, read, sent, received, viewed, or heard, CONCERNING PS3,
15 SCEA, the PSN, or any matter asserted in this litigation.

16 **REQUEST FOR PRODUCTION NO. 27:**

17 ANY and ALL agreements Antal Herz has entered into with his counsel in the above-
18 captioned litigation, including, but not limited to, ANY and ALL engagement agreements.

19 **REQUEST FOR PRODUCTION NO. 28:**

20 ANY and ALL DOCUMENTS CONCERNING an allegedly false posting made on or
21 about June 6, 2010 on the website of Meiselman Denlea Packman Carton & Eberz P.C.
22 CONCERNING this litigation, including, but not limited to, the investigation of the source of that
23 posting, including whether it was the result of hacking; the identity of the individual(s) who
24 allegedly hacked that website to create the posting; and YOUR COMMUNICATIONS
25 CONCERNING the posting, including CONCERNING the alleged hack and the accurate status
26 of this litigation.

27 **REQUEST FOR PRODUCTION NO. 29:**

28 ANY and ALL DOCUMENTS CONCERNING YOUR nicknames, handles, or other

1 moniker YOU use other than YOUR name when COMMUNICATING on Internet websites,
2 Internet postings, chat rooms, or blog posts.

3 **REQUEST FOR PRODUCTION NO. 30:**

4 ANY and ALL DOCUMENTS CONCERNING any hack or "jailbreak" of the PS3,
5 including ANY and ALL DOCUMENTS CONCERNING COMMUNICATIONS YOU have had
6 with a PERSON who has hacked the PS3.

7 **REQUEST FOR PRODUCTION NO. 31:**

8 DOCUMENTS sufficient to establish Antal Herz's employment history.

9
10 Dated: September 24, 2010

11 DLA PIPER LLP (US)

12 By: 

13 LUANNE SACKS
14 CARTER W. OTT
15 Attorneys for Defendant
16 SONY COMPUTER ENTERTAINMENT
17 AMERICA LLC
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