

# EXHIBIT H

November 10, 2010

Reply to San Francisco, CA

Writer's Direct Email: [rrivas@finkelsteinthompson.com](mailto:rrivas@finkelsteinthompson.com)

Via Electronic Mail and Federal Express

Ms. Luanne Sacks, Esq.  
**DLA PIPER**  
555 Mission Street, Suite 2400  
San Francisco, CA 94105  
[Luanne.Sacks@dlapiper.com](mailto:Luanne.Sacks@dlapiper.com)

Dear Lu:

We write to confirm the results of the parties' meet and confer on October 29, 2010 regarding (1) ESI; and (2) SCEA's Responses and Objections to Plaintiffs' First Set of Requests for Production of Documents. We hope this letter also serves to continue the parties' discussions at our next meeting.

**I. ESI**

You confirmed that SCEA is complying with its preservation obligations and that a litigation hold notice was sent to SCEI. You informed Plaintiffs that you will speak to your client to determine if SCEI is complying with the litigation hold notice, but that it was your understanding that SCEI does not destroy or delete documents within the normal course of business.

You also confirmed that documents in the possession, custody and control of third parties performing customer service on behalf of SCEA are complying with applicable preservation obligations.

Further, you specified that SCEA is preserving PSN data and comments posted on SCEA's blog related to Firmware Update 3.21 and the removal of the Other OS feature.

You stated that SCEA does not preserve voicemail and that you will speak to the client about whether voicemail is in digital or analog format. You stated that you will



also speak to your client to determine whether instant messaging is used at SCEA for business activities.

In terms of the identity of the custodians at SCEA who are searching for responsive documents, you stated that they are the individuals identified in SCEA's Initial Disclosures. You also stated that SCEA will provide Plaintiffs with a list of the proposed search terms that you suggest using to search for ESI responsive to Plaintiffs' document requests. Plaintiffs believe that the search terms used and custodians searched should be the subject of additional meet and confers and part of a collaborative process. Until we have had a chance to review SCEA's proposals, as well as organizational charts, etc., we are not in a position to consent to any of SCEA's specific protocols and reserve our rights to seek additional discovery.

## **II. Document Requests**

You confirmed that SCEA is not withholding production of responsive documents based upon the objections raised in its responses.

### Request No. 1:

In response to this request, SCEA stated, in part, that it will "produce statements publicly disseminated". You clarified that the foregoing phrase means electronic, hard copy, and television advertisements in SCEA's possession, custody and control and that this would include any advertisements created in-house or by firms SCEA hired.

### Request Nos. 2 and 23:

You confirmed that SCEA distributed PS3s from November 17, 2006 through March 27, 2010.

### Request Nos. 3 and 4:

You stated that SCEA will produce all instructions relating to the Other OS feature wherever they appeared.

### Request Nos. 5-7:

We explained that these requests seek documents, including any studies, focus groups, statistics or polls (as well as other internal documents such as emails, presentations, etc.) referring or relating to the decision *to include* the Other OS feature on the PS3; the decision *to disable or remove* the Other OS feature on the PS3; and



consumers' interest in buying a video game console with the Other OS feature. You stated that SCEA is the distributor and marketer of the PS3, but is not involved in the design of the PS3.

Although SCEA is not involved in the PS3's design, Plaintiffs contend that SCEA likely communicated with SCEI and/or Sony Corporation of America regarding the decision to remove the Other OS feature to enable SCEA to address any consumer complaints. Moreover, it is Plaintiffs' position that responsive documents held by SCEI and potentially other Sony entities may be in the possession, custody, or control of SCEA and therefore amenable to production.

You stated that you will speak to your client about these requests. You also agreed to see if SCEI will agree to produce documents related to these three requests as an initial response given your position that we cannot compel SCEA to produce SCEI documents. If SCEI is not amenable to producing these documents, Plaintiffs may seek to name SCEI as a Defendant. We need to discuss if SCEA will consent to this amendment.

Plaintiffs are also willing to consider entering into a tolling agreement with SCEI whereby SCEI would not initially be named as a Defendant and any potential statute of limitations would be tolled as of the date of the agreement. As stated, we do not believe that there is a statute of limitations issue here, but SCEA has suggested that some claims may run from the date of purchase as opposed to the date of Firmware Update 3.21. We would like to discuss if you can reach out to SCEI to see if they will consider entering into such an agreement. If we should speak to someone else about this issue, please let us know who that would be. We need an answer as soon as possible.

Request No. 8:

You stated that SCEA will produce a summary, such as an excel spreadsheet, indicating the number of PS3s (broken down by model) distributed in the United States and its territories. We reserve Plaintiffs' right to seek the backup supporting this information should we find it necessary.

Request No. 9:

Plaintiffs agreed to defer this request.

Request Nos. 10-13:

These requests present similar issues as to those with respect to Nos. 5-7. Plaintiffs request that you speak to your client about these requests as well.



Request No. 14:

You stated that SCEA will produce an Access database file of consumer complaints (received by letter, phone call or email) that were recorded in SCEA's Siebel database in a special bucket labeled "3.21". You stated that this bucket was created before the release of Firmware Update 3.21. You also stated that the personal identifying information would be redacted.

Finally, you agreed that SCEA will also produce monthly reports that are prepared at SCEA regarding consumer complaints, as well as any scripts used by SCEA's customer service representatives to respond to complaints about SCEA's removal of the Other OS feature.

Request No. 15:

You stated that SCEA will produce all versions of any customer agreements or contracts that relate to the PS3's Other OS feature.

Request Nos. 16-17:

You stated that you will determine whether responsive documents to these requests exist.

Request No. 18:

Plaintiffs agreed to defer this request until after they have reviewed SCEA's document production.

Request No. 19:

You stated that some responsive documents exist and that SCEA will produce them.

Request Nos. 20-22:

Plaintiffs agreed to limit these requests to advertising and marketing materials.



Request No. 24:

You stated that apart from the various versions of the Limited Hardware Warranty and Liability, the System Software License Agreement, and the Terms of Service and User Agreement, SCEA is not withholding any other responsive documents.

Request No. 25:

You stated that SCEA will produce all materials from the SCEA website or that were communicated to the proposed Class members regarding Firmware Update 3.21.

Request No. 26:

You stated that SCEA needs the Plaintiffs' addresses, their PSN serial numbers, and PSN account numbers for purposes of producing documents responsive to this request.

Request No. 27:

You agreed to produce anything SCEA has related to the United States. Plaintiffs reserve their rights as to other documents.

Request No. 28:

You stated that you did not believe that there was any way to determine this, but will double check. We agreed to follow up with an interrogatory.

Request No. 29:

You stated that you will speak with your client about this request.

Finally, it is Plaintiffs' position that SCEA should produce responsive documents without further delay.

Please let me know if any of the above statements does not comport with your understanding. Thank you.

Sincerely,

  
Rosemary M. Rivas