

EXHIBIT J

From: James Pizzirusso [jpizzirusso@hausfeldllp.com]
Sent: Thursday, September 16, 2010 12:05 PM
To: Sacks, Luanne; Ott, Carter
Cc: RRivas@finkelsteinthompson.com; jquadra@calvoclark.com; rcoll@calvoclark.com
Subject: Letter re: PS3
Follow Up Flag: Follow up

Attachments: PS3 Letter to Sacks 9.16.10.pdf

Luanne:

Please see the attached letter which was also sent via overnight mail.

Sincerely,

James Pizzirusso

James J. Pizzirusso, Partner
jpizzirusso@hausfeldllp.com

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12/13/2010

September 16, 2010

Via Email and Federal Express

Luanne Sacks, Esquire
DLA Piper LLP
555 Mission Street, Suite 2400
San Francisco, CA 94105-2933

Re: *In re Sony PS3 "Other OS" Litig.*, No. 3:10-cv-01811-RS (N.D.Cal.)

Dear Luanne:

I write in response to your letter to me dated August 26, 2010 ("Letter"). We appreciate your "spirit of cooperation" and look forward to working with you on this matter. Like SCEA, Plaintiffs have also taken what we believe are the necessary and appropriate steps to comply with any applicable preservation guidelines related to this matter. Plaintiffs would like to note objections to the requests in your letter, however, to the extent your client seeks to impose preservation and discovery obligations beyond those contemplated by the Federal Rules of Civil Procedure.

First, you recite a number of preservation obligations that you request "Plaintiffs" follow -- a phrase which your letter defines to include (a) the named plaintiffs in the operative consolidated complaint, (b) "all individuals in the complaints filed in the various actions that have been consolidated in the Matter," and (c) "any individual who has not formally appeared as a plaintiff in the Matter but whom you contend has retained any law firm that is counsel of record in the Matter as his or her attorney..." Letter at 1.

As you are no doubt aware, the Case Management Order entered by Judge Seeborg on June 30, 2010 provides for the filing of a consolidated complaint, which "shall be deemed the operative complaint, *superseding all complaints filed in this action*, or any of the actions to be consolidated hereunder or in any related cases." See Docket Entry No. 65 at ¶ 11 (emphasis added). The Consolidated Complaint, which was filed on July 30, includes five named class

representative plaintiffs. See Amended Complaint, Docket Entry No. 76. As such, the definition and use of the phrase "Plaintiffs" set forth in your letter is overbroad to the extent that it seeks to impose preservation and discovery obligations on absent class members who are *not* (or who are no longer) named class representatives in the operative Complaint. To the extent that your client will seek preservation and discovery obligations from these plaintiffs, Plaintiffs believe that such requests are inappropriate. See, e.g., *Pierce v. County of Orange*, 526 F.3d 1190, 1202 n.9 (9th Cir. 2008) (acknowledging the "limitations on absent class member discovery inherent in Fed.R.Civ.P. 23").¹

Second, your Letter instructs the "Plaintiffs" to preserve their PS3s "in the state they existed as of the date of the issuance of...firmware update 3.21 (which, you state, means that the game consoles should not be used under "any circumstances"); any PC, home computer, Wii or Xbox game consoles "used" during the "relevant period;" and all "media, [] movies and games" purchased for use on the PS3s.² See Letter at 2-3. As we have already made clear, we believe that this preservation instruction and anticipated discovery is overbroad and/or improper, as these materials would not be relevant to plaintiffs' claims or your client's defenses. Nor would such discovery "reasonably calculated to lead to the discovery of admissible evidence." FED. R. CIV. P. 26(b)(1).

With respect to the Plaintiffs' PS3 units in particular, there is no dispute that consumers who downloaded the 3.21 firmware update had the Other OS feature disabled. Indeed, you said as much in your recently filed motion to dismiss memorandum. See Docket Entry No. 97 at 1 ("On April 1, 2010, SCEA issued Firmware Update 3.21. If a user downloaded Update 3.21, he would be

¹ See also, *In Re Qwest Communications International, Inc., Securities Litig.*, 2005 U.S. Dist. LEXIS 11618, at *10 (D. Col., June 7, 2005); *Kops v. Lockheed Martin Corporation*, 2003 U.S. Dist. LEXIS 8568, at *3-4 (C.D. Cal., May 14, 2003) (holding that non-lead named plaintiffs in a class action lawsuit "have no role in the litigation apart from being members of the proposed class" and, as such, are rendered "akin to 'absent class members' to whom special rules of discovery apply"); *In re Currency Conversion Fee Antitrust Litig.*, 2004 WL 2453927, at *2 (refusing to allow discovery of withdrawn class representatives); *In re Lucent Technologies, Inc. Sec. Litig.*, 2002 WL 32818345, at *1 (D.N.J. May 9, 2002); *magistrate's ruling aff'd* by 2002 WL 32815233 (D.N.J. July 16, 2002); *In re Carbon Dioxide Indus. Antitrust Litig.*, 155 F.R.D. 209, 211-12 (M.D. Fla. 1993) ("By virtue of not being chosen as class representatives, these Plaintiffs remain as passive class members, on equal footing with all other non-representative class members"); *Feldman v. Motorola, Inc.*, 1992 WL 415382, at *6 *7 (N.D. Ill. 1992) (same); *Org. of Minority Vendors, Inc. v. Illinois Central Gulf R.R.*, 1987 WL 8997, at *1 (N.D. Ill. 1987) (same).

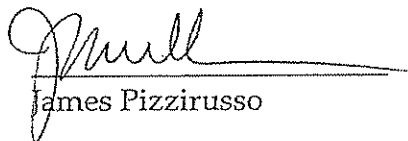
² Furthermore, if you were going to request that our clients no longer use their PS3 units, we asked whether your client would be willing to provide replacement PS3 units during the pendency of this litigation and you declined such a request. See E-mail to Plaintiffs, August 23, 2010.

able to use all currently available PS3 functions except the Other OS.”). Accordingly, as we stated in our CMC statement, we do not believe there is a reasonable basis by which you can demand Plaintiffs’ no longer use their PS3s and you have provided no justification for this request.³ We are available to meet and confer on this issue, but to the extent you disagree with our position, we are prepared to raise this issue with Magistrate Judge Chen as soon as possible.

Third, your August Letter attaches a letter sent by you to Jeffrey Carton on June 9, 2010 regarding certain material that purportedly appeared on his firm's website. I believe his firm has assured you that they are taking all of the steps necessary to preserve evidence in their possession, custody or control to the extent required under the Federal Rules. Nevertheless, the Plaintiff Co-Leads do not believe that this issue has any bearing on or relevancy to the claims or defenses in the consolidated actions and will object to any discovery being served related to that matter in this case. Therefore, we will not take any steps in this regard absent a court order.

Our failure to address every other specific item in your letter should not be viewed as an agreement that we found your other requests appropriate. If you would like to discuss these or any other issues, please feel free to call me at your convenience.

Sincerely,


James Pizzirusso

³ Plaintiffs would have no objection, in general, to interrogatories or deposition questions that ask whether the Plaintiffs downloaded Update 3.21, and whether the Other OS feature on their PS3s is no longer operable.