

# EXHIBIT V

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and Counsel for Plaintiffs

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

14 IN RE SONY PS3 "OTHER OS"  
15 LITIGATION

) Case No. CV-10-1811-RS

) **RESPONSES AND OBJECTIONS**  
) **OF PLAINTIFF ANTAL HERZ TO**  
) **SCEA'S REQUEST FOR PRODUCTION**  
) **OF DOCUMENTS AND THINGS**

22 PROPOUNDING PARTY: DEFENDANT SONY COMPUTER ENTERTAINMENT  
23 AMERICA LLC

24 RESPONDING PARTY: PLAINTIFF ANTAL HERZ

25 SET NO: ONE

1 Pursuant to Federal Rule of Civil Procedure 34, Plaintiff Antal Herz ("Plaintiff") hereby  
2 responds to Defendant Sony Computer Entertainment America LLC's ("SCEA" or "Defendant")  
3 First Request for Production of Documents and Things ("Requests") dated September 24, 2010.

4 **I. GENERAL OBJECTIONS**

5 A. Plaintiff objects to these Requests insofar as they purport to impose any obligations  
6 on them that are not required by law, or are inconsistent with Federal Rule of Civil Procedure 34,  
7 and Plaintiff objects to the Instructions and Definitions insofar as they conflict with or seek to  
8 impose obligations on him beyond those of the Federal Rules of Civil Procedure.

10 B. Plaintiff objects to these Requests insofar as they fail to state with sufficient  
11 particularity the materials and categories of materials to be produced.

12 C. Plaintiff objects to the Requests to the extent they require the production of  
13 documents or things that are not in Plaintiff's possession, custody, or control.

14 D. Plaintiff objects to these Requests insofar as they seek or require the disclosure of  
15 documents that are protected from discovery by the attorney-client privilege, the work product  
16 doctrine, or any other applicable privilege or immunity. Plaintiff further objects to these Requests  
17 to the extent they seek materials reflecting legal advice or reflecting requests for legal advice. The  
18 inadvertent production of any document protected by an applicable privilege or doctrine, or to  
19 whose production is otherwise objected, is not intended to constitute, and shall not constitute, a  
20 waiver in whole or in part of such privilege, doctrine, or objection.

22 E. Plaintiff objects to these Requests insofar as they seek information that is protected  
23 by Plaintiff's right to privacy, financial or otherwise, including, but not limited to, personal  
24 financial documentation and other similar information.

26 F. Plaintiff objects to these Requests insofar as they are overly broad and unduly  
27 burdensome.

1           G.     Plaintiff objects to these Requests insofar as they are vague or ambiguous.

2           H.     Plaintiff objects to these Requests insofar as the requested documents are neither

3 relevant nor reasonably calculated to lead to the discovery of admissible evidence.

4           I.     By responding to these Requests, Plaintiff intends to preserve, and not waive, the

5 following:

6                   1.     all objections to the competency, relevancy, materiality, and admissibility

7 of any of the Requests, the Responses and their subject matter;

8                   2.     all objections to the vagueness, ambiguity or other infirmity in the form of

9 any of the Requests, and any objections based on the undue burden imposed by them;

10                  3.     all rights to object on any ground to the use of any of the Responses, or their

11 subject matter, in any subsequent proceedings, including the trial of this or any other action;

12                  4.     all rights to object on any ground to any other discovery requests involving

13 or related to the subject matter of the Requests;

14                  5.     the right to supplement Responses to the Requests prior to trial; and

15                  6.     any and all privileges and rights under the applicable Federal Rules of Civil

16 Procedure, the Local Rules of the Court or other statutes or common law.

17           J.     Insofar as Plaintiff provides documents in response to these Requests, such

18 production shall not constitute a waiver of any objection to the relevancy of such documents, all

19 such objections being expressly reserved. Plaintiff also expressly reserves the right to object to

20 further discovery, to the subject matter of these Requests, and to the introduction of any Response

21 to these Requests or any portion thereof, or any document produced herein, into evidence in this or

22 any other action.

23           K.     A response to any Request stating that Plaintiff will produce such documents does

24 not mean such documents do, in fact, exist, or are in the possession, custody or control of Plaintiff.

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1 L. Plaintiff reserves the right to supplement, add to, amend, or modify these  
2 responses. In responding to these Requests, Plaintiff reserves the right to specify documents  
3 generally, without having to characterize the contents thereof.

4 M. Plaintiff objects to the definition of "Personal Computer" as overbroad and in that it  
5 seeks information that is not relevant to a claim or defense of any party.

6 N. Plaintiff objects to the definition of "Communication" and "Communications" as  
7 overly broad because it includes Plaintiff's counsel, and would require production of documents  
8 protected by the attorney-client privilege and work product doctrine, and would require production  
9 of documents from Plaintiff's counsel, who are non-parties to this litigation. Unless otherwise  
10 noted, such documents will not be produced.

11 O. Plaintiff objects to the definition of "You", "Your", and "Yourself" as overly broad  
12 because it includes Plaintiff's counsel, and would require production of documents protected by  
13 the attorney-client privilege and work product doctrine, and would require production of  
14 documents from Plaintiff's counsel, who are non-parties to this litigation. Unless otherwise noted,  
15 such documents will not be produced.

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17  
18 **II. OBJECTIONS TO SPECIFIC REQUESTS**

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

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

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

22 Plaintiff incorporates by reference his General Objections and further objects to this  
23 Request as it is overly broad, unduly burdensome, vague and ambiguous, seeks documents  
24 irrelevant to the claims or defenses of any party to this litigation and is not reasonably calculated  
25 to lead to the discovery of admissible evidence. Plaintiff objects to this Request to the extent that  
26 it seeks information protected by the attorney-client privilege and attorney work product doctrine.  
27  
28

1 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
2 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
3 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
4 request seeks and/or narrow this request to appropriate relevant areas.

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

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

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12  
13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

14 Plaintiff incorporates by reference his General Objections and further objects to this  
15 Request to the extent that it seeks information protected by the attorney-client privilege and  
16 attorney work product doctrine. Plaintiff also object to the terms and phrases "HACK or  
17 JAILBREAK," which are vague and ambiguous, and when read in conjunction with other defined  
18 and undefined terms would impose an undue burden on Plaintiff to speculate as to what  
19 documents might possibly relate to the subject of the request, and then produce those documents.  
20 Plaintiff also objects to this Request as it is overly broad, unduly burdensome, vague and  
21 ambiguous, seeks documents irrelevant to the claims or defenses of any party to this litigation and  
22 is not reasonably calculated to lead to the discovery of admissible evidence. In particular, the  
23 Request seeks information that is not relevant to any claim or defense in this action insofar as it  
24 seeks documents concerning consumer products other than the PS3. Subject to and without  
25 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
26 request seeks and/or narrow this request to appropriate relevant areas.  
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1 **REQUEST FOR PRODUCTION NO. 3:**

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

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5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

6 Plaintiff incorporates by reference his General Objections and further objects to this  
7 Request insofar as it violates his right to privacy, is overly broad, unduly burdensome, seeks  
8 information irrelevant to the claims or defenses of any party to this litigation and is not reasonably  
9 calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this Request to  
10 the extent this Request seeks information in SCEA's possession, custody, or control, as to which  
11 SCEA has equal access. Moreover, Plaintiff objects to this Request since it is believed that any  
12 testing of Plaintiff's PS3s will ultimately cause harm to the items. Defendants are also directed to  
13 the letter from Plaintiffs' counsel dated September 16, 2010 addressed to Luanne Sacks outlining  
14 Plaintiffs' objections to Defendant's request for the production of Plaintiffs' PS3 consoles.  
15 Therefore, Plaintiff will not produce the PS3s in his possession, custody, or control without an  
16 appropriate order from this Court. Subject to and without waiving the foregoing objections,  
17 Plaintiff is willing to meet and confer to clarify what this request seeks and/or narrow this request  
18 to appropriate relevant areas.  
19  
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21 **REQUEST FOR PRODUCTION NO. 4:**

22 ANY and ALL DOCUMENTS CONCERNING the purchase, receipt and/or acquisition of  
23 each PS3 to be identified and produced in response to Request Number 3, including, but not  
24 limited to purchase orders, bills of sale, invoices, credit card receipts cancelled checks and money  
25 orders.  
26

27  
28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

1 Plaintiff incorporates by reference his General Objections and further objects to this  
2 Request as it is overbroad, unduly burdensome, vague and ambiguous, seeks documents that are  
3 irrelevant to the claims or defenses of any party to this litigation and is not reasonably calculated  
4 to lead to the discovery of admissible evidence. Plaintiff also objects to this request on the  
5 grounds that it violates the attorney-client privilege and attorney work product doctrine. Plaintiff  
6 also objects to this Request to the extent this Request seeks documents in SCEA's possession,  
7 custody, or control, as to which SCEA has equal access. Subject to and without waiving the  
8 foregoing, to the extent responsive documents exist, Plaintiff will produce those documents in his  
9 possession, custody, or control, sufficient to evidence the purchase of the PS3 at issue in this  
10 litigation.  
11

12 **REQUEST FOR PRODUCTION NO. 5:**  
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14 ANY and ALL DOCUMENTS and things that, at the time of purchase, receipt and/or  
15 acquisition, accompanied each PS3 to be identified and produced in response to Request Number  
16 3, including, but not limited to, boxes, containers, packaging materials, instruction manuals or  
17 pamphlets, papers, inserts, promotional materials, disclaimers, warranty cards, reports, brochures,  
18 schematics, customer service information, graphics, pictures, cables, controllers, connectors,  
19 remote control devices, protective covering, Compact Disc, Digital Versatile Disc. Blu-ray™  
20 Disc, and/or ANY other writings, hardware, software and/or peripherals.  
21

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**  
23

24 Plaintiff incorporates by reference his General Objections and further objects to this  
25 Request insofar as it is overly broad, unduly burdensome, vague and ambiguous, seeks documents  
26 irrelevant to the claims or defenses of any party to this litigation, and is not reasonably calculated  
27 to lead to the discovery of admissible evidence. Plaintiff also objects to this Request to the extent  
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1 this Request seeks documents in SCEA's possession, custody, or control, as to which SCEA has  
2 equal access. Subject to and without waiving the foregoing objections, Plaintiff is willing to meet  
3 and confer to clarify what this request seeks and/or narrow this request to appropriate relevant  
4 areas.

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

6  
7 ANY and ALL DOCUMENTS and/or things not responsive to Request Number 3  
8 CONCERNING ANY data, game, program, operating system, application, file, hard drive,  
9 memory storage device, Internet browser, mouse, printer, television, cable, wireless network,  
10 hardware, firmware, peripheral, monitor, keyboard, Compact Disc, Digital Versatile Disc,  
11 Bluray™ Disc, and or software code that HERZ authored, created, used with, connected to,  
12 installed on, downloaded to, backed up to, backed up from, imaged and/or uninstalled on each PS3  
13 to be identified and produced in response to Request Number 3 that did not accompany each PS3  
14 at the time of purchase, receipt and/or acquisition.  
15

16  
17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

18 Plaintiff incorporates by reference his General Objections and further objects to this  
19 Request as it violates Plaintiff's right to privacy and the privacy rights of third parties, is overly  
20 broad, unduly burdensome, vague and ambiguous, seeks information irrelevant to the claims or  
21 defenses of any party to this litigation, and is not reasonably calculated to lead to the discovery of  
22 admissible evidence. Plaintiff also objects to this request on the grounds that it violates the  
23 attorney-client privilege and attorney work product doctrine. Plaintiff also objects to this Request  
24 to the extent this Request seeks information in SCEA's possession, custody, or control, as to  
25 which SCEA has equal access. Moreover, Plaintiff objects to this Request since it is believed that  
26 any testing of these components by SCEA will ultimately cause harm to the items. Defendant is  
27  
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1 also directed to the letter from Plaintiffs' counsel dated September-16, 2010 addressed to Luanne  
2 Sacks outlining Plaintiffs' objections to Defendant's request for the production such items.  
3 Subject to and without waiving the foregoing objections, Plaintiff is willing to meet and confer to  
4 clarify what this request seeks and/or narrow this request to appropriate relevant areas.  
5

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

7 A forensic copy of the hard drive for ANY and ALL PERSONAL COMPUTERS used by  
8 Antal Herz during the DESIGNATED PERIOD, including, but not limited to, any used by Antal  
9 Herz at his place of residence and/or place of business.  
10

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

12 Plaintiff incorporates by reference his General Objections and further objects to this  
13 Request as it violates Plaintiff's right to privacy and the privacy rights of third parties, is overly  
14 broad, unduly burdensome, harassing, seeks information irrelevant to the claims or defenses of  
15 any party to this litigation, and is not reasonably calculated to lead to the discovery of admissible  
16 evidence. Plaintiff also objects to this request on the grounds that it violates the attorney-client  
17 privilege and attorney work product doctrine. Moreover, Plaintiff objects to this Request since it  
18 is believed that any testing of these components by SCEA will ultimately cause harm to the items.  
19 Defendant is also directed to the letter from Plaintiffs' counsel dated September 16, 2010  
20 addressed to Luanne Sacks outlining Plaintiffs' objections to Defendant's request for the  
21 production such items. Therefore, Plaintiff will not produce any of the requested items in his  
22 possession, custody, or control without an appropriate order from this Court.  
23  
24

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

26 ANY and ALL DOCUMENTS CONCERNING the purchase, receipt and/or acquisition of  
27 ANY and ALL PERSONAL COMPUTERS in Antal Herz's possession, custody or control,  
28

1 including, but not limited to, any used by Antal Herz at his place of residence and/or place of  
2 business during the DESIGNATED TIME PERIOD, including, but not limited to purchase orders,  
3 bills of sale, invoices, credit card receipts, cancelled checks and money orders.  
4

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

6 Plaintiff incorporates by reference his General Objections and further objects to this  
7 Request on the grounds that it violates his privacy rights and the privacy rights of third parties, is  
8 overly broad, unduly burdensome, harassing, seeks documents irrelevant to the claims or defenses  
9 of any party to this litigation, and is not reasonably calculated to lead to the discovery of  
10 admissible evidence. Plaintiff also objects to this request on the grounds that it violates the  
11 attorney-client privilege and attorney work product doctrine.  
12

13 REQUEST FOR PRODUCTION NO.9:

14 ANY and ALL DOCUMENTS CONCERNING agreements you signed, affirmed, or  
15 otherwise consented to CONCERNING YOUR use of each PS3 identified and produced in  
16 response to Request Number 3, including, but not limited, ANY and ALL DOCUMENTS  
17 CONCERNING warranties, license agreements, and terms of use.  
18

19  
20 RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

21 Plaintiff incorporates by reference his General Objections and further objects to this  
22 Request as it is overly broad, unduly burdensome, vague and ambiguous, seeks documents  
23 irrelevant to the claims or defenses of any party to this litigation, and is not reasonably calculated  
24 to lead to the discovery of admissible evidence. Plaintiff also objects to this request on the  
25 grounds that it violates the attorney-client privilege and attorney work product doctrine. Plaintiff  
26 also objects to this Request to the extent this Request seeks documents in SCEA's possession,  
27 custody, or control, as to which SCEA has equal access. Plaintiff also object to the terms and  
28

1 phrases "signed, affirmed, or otherwise consented," which are vague and ambiguous, and when  
2 read in conjunction with other defined and undefined terms would impose an undue burden on  
3 Plaintiff to speculate as to what documents might possibly relate to the subject of the request, and  
4 then produce those documents. Subject to and without waiving the foregoing objections, Plaintiff  
5 is willing to meet and confer to clarify what this request seeks and/or narrow this request to  
6 appropriate relevant areas.  
7

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

9  
10 ANY and ALL advertisements, marketing, promotion literature, DOCUMENTS and/or  
11 COMMUNICATIONS which YOU contend are "false and/or misleading" as alleged in Paragraph  
12 141 of the CONSOLIDATED COMPLAINT.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

14  
15 Plaintiff incorporates by reference his General Objections and further objects to this  
16 Request as it is overly broad, unduly burdensome and vague and ambiguous. Plaintiff also objects  
17 to this Request to the extent this Request seeks documents in SCEA's possession, custody, or  
18 control, as to which SCEA has equal access. Subject to and without waiving the foregoing  
19 objections, Plaintiff is willing to meet and confer to clarify what this request seeks and/or narrow  
20 this request to appropriate relevant areas.  
21

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

23  
24 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 2 of the  
25 CONSOLIDATED COMPLAINT that SCEA "advertised the PS3's 'Other OS' feature as an  
26 essential and important characteristic."

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**  
28

1 Plaintiff incorporates by reference his General Objections and further objects to this  
2 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
3 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
4 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
5 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
6 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
7 request seeks and/or narrow this request to appropriate relevant areas.  
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9 **REQUEST FOR PRODUCTION NO. 12:**

10  
11 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 4 of the  
12 CONSOLIDATED COMPLAINT that "Defendant could have taken other less intrusive or  
13 extreme measures, other than disabling the 'Other OS' feature, to address its purported 'security'  
14 concerns."  
15

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

17 Plaintiff incorporates by reference his General Objections and further objects to this  
18 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
19 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
20 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
21 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
22 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
23 request seeks and/or narrow this request to appropriate relevant areas.  
24

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

1 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 4 of the  
2 CONSOLIDATED COMPLAINT that "Defendant's removal of the 'Other OS' feature  
3 eviscerated one of the PS3's primary purposes, *i.e.* its use as a personal computer."  
4

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

6 Plaintiff incorporates by reference his General Objections and further objects to this  
7 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
8 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
9 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
10 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
11 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
12 request seeks and/or narrow this request to appropriate relevant areas.  
13

14 REQUEST FOR PRODUCTION NO. 14:

15  
16 ANY and ALL DOCUMENTS that Antal Herz relied upon in purchasing, receiving or  
17 acquiring any PS3, including but not limited to, ANY and ALL DOCUMENTS CONCERNING  
18 YOUR allegations in Paragraph 14 of the CONSOLIDATED COMPLAINT that "[b]efore  
19 purchasing the PS3, Mr. Herz performed extensive research on the Internet. Among other things,  
20 Mr. Herz reviewed and relied on the statements on Defendant's website with regard to the PS3's  
21 'Other OS' feature, as well as the PS3's other advertised features such as the ability to access the  
22 PSN, play video games, watch movies, and listen to music, among other things" and "Defendant's  
23 representations about the PS3's features, including the 'Other Os' feature, played a substantial  
24 factor in influencing Plaintiff's decision to purchase a PS3 over the Xbox 360 and Wii."  
25

26 RESPONSE TO REQUEST FOR PRODUCTION NO. 14:  
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1 Plaintiff incorporates by reference his General Objections and further objects to this  
2 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
3 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
4 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
5 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
6 waiving the foregoing, to the extent non-privileged responsive documents exist in the possession,  
7 custody, or control of Plaintiff, they will be produced  
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9  
10 **REQUEST FOR PRODUCTION NO. 15:**

11 ANY and ALL DOCUMENTS CONCERNING Antal Herz's use of each PS3 to be  
12 identified and produced in response to Request Number 3, including, but not limited to, ANY and  
13 ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 14 of the  
14 CONSOLIDATED COMPLAINT that "[Antal Herz] uses the PS3 for personal, family and  
15 household uses" and "also extensively used his PS3 as a computer, including to browse the  
16 Internet, run word processor software, spreadsheet software, email software, other productivity  
17 applications, and make his own programs."  
18

19  
20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

21 Plaintiff incorporates by reference his General Objections and further objects to this  
22 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
23 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
24 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
25 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
26 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
27 request seeks and/or narrow this request to appropriate relevant areas.  
28

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

2 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 48 of the  
3 CONSOLIDATED COMPLAINT that "[t]he 'Other OS' function was extremely valuable to PS3  
4 purchasers."  
5

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

7 Plaintiff incorporates by reference his General Objections and further objects to this  
8 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
9 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
10 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
11 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
12 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
13 request seeks and/or narrow this request to appropriate relevant areas.  
14  
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16 **REQUEST FOR PRODUCTION NO. 17:**

17 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 56 of the  
18 CONSOLIDATED COMPLAINT that "Defendant did not adequately notify its customers that all  
19 such data would be lost once they installed the update."  
20

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

22 Plaintiff incorporates by reference his General Objections and further objects to this  
23 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
24 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
25 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
26 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
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1 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
2 request seeks and/or narrow this request to appropriate relevant areas.

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

4  
5 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 58 of the  
6 CONSOLIDATED COMPLAINT that “[m]any users purchased peripheral devices specifically for  
7 use with the ‘Other OS’ function, such as wireless keyboards and mice and external hard drives.  
8 Such devices are rendered superfluous to users that install Update 3.21.”

9  
10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

11 Plaintiff incorporates by reference his General Objections and further objects to this  
12 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
13 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
14 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA’s  
15 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
16 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
17 request seeks and/or narrow this request to appropriate relevant areas.

18  
19 **REQUEST FOR PRODUCTION NO. 19:**

20  
21 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 59 of the  
22 CONSOLIDATED COMPLAINT that “[u]sers who chose not to install Update 3.21 were also  
23 damaged in that they lost access to many attributes of PS3 (sic) including their PSN purchases  
24 other than gaming. For example, Defendant offers Qore, an online service that offers a variety of  
25 content and news concerning PS3 functions. Users pay \$24.99 for an annual subscription.  
26 However, users that purchased Qore prior to the release of Update 3.21 and who did not install the  
27

1 update were denied the benefit of their annual subscription. Similarly, users who do not install  
2 Update 3.21 lose access to any prepaid PSN account balances.”

3  
4 RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

5 Plaintiff incorporates by reference his General Objections and further objects to this  
6 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
7 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
8 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA’s  
9 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
10 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
11 request seeks and/or narrow this request to appropriate relevant areas.  
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13 REQUEST FOR PRODUCTION NO. 20:

14 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 79 of the  
15 CONSOLIDATED COMPLAINT that “Defendant expressly warranted via its advertising,  
16 statements, brochures, website information, public statements, owner’s manuals, and other  
17 representations that the functionality of the PS3 would include both the ‘Other OS’ and the various  
18 other advertised functions.”  
19  
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21 RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

22 Plaintiff incorporates by reference his General Objections and further objects to this  
23 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
24 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
25 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA’s  
26 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
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1 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
2 request seeks and/or narrow this request to appropriate relevant areas.

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

4  
5 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 105 of the  
6 CONSOLIDATED COMPLAINT that “[b]efore purchasing the PS3, Plaintiff each reviewed and  
7 relied on Defendant’s affirmative representations about the PS3’s features and omissions of  
8 material facts, including that Defendant would disable the ‘Other OS’ feature.”  
9

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

11 Plaintiff incorporates by reference his General Objections and further objects to this  
12 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
13 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
14 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA’s  
15 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
16 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
17 request seeks and/or narrow this request to appropriate relevant areas.  
18

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

20  
21 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 107 of the  
22 CONSOLIDATED COMPLAINT that “Defendant failed to adequately disclose, at the time of  
23 purchase, that it might disable the ‘Other OS’ feature.”  
24

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

26 Plaintiff incorporates by reference his General Objections and further objects to this  
27 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
28

1 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
2 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
3 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
4 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
5 request seeks and/or narrow this request to appropriate relevant areas.  
6

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

8 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 114 of the  
9 CONSOLIDATED COMPLAINT that "Defendant also violated Civil Code §1770(19) by inserting  
10 one or more unconscionable provisions into a contract."  
11

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

13 Plaintiff incorporates by reference his General Objections and further objects to this  
14 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
15 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
16 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
17 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
18 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
19 request seeks and/or narrow this request to appropriate relevant areas.  
20

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

22  
23 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 165 of the  
24 CONSOLIDATED COMPLAINT that "[b]y purchasing a PS3, Plaintiff and each member of the  
25 Class became owners of their PS3 and all of their PS3's features. Thus, the PS3's features,  
26 including the 'Other OS' feature, which was designed, marketed, and built-in to the PS3, were  
27 Plaintiffs' and the Class's property."  
28

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

2 Plaintiff incorporates by reference his General Objections and further objects to this  
3 Request insofar as it is overly broad and unduly burdensome. Plaintiff also objects to this request  
4 on the grounds that it violates the attorney-client privilege and attorney work product doctrine.  
5 Plaintiff also objects to this Request to the extent this Request seeks documents in SCEA's  
6 possession, custody, or control, as to which SCEA has equal access. Subject to and without  
7 waiving the foregoing objections, Plaintiff is willing to meet and confer to clarify what this  
8 request seeks and/or narrow this request to appropriate relevant areas.  
9

10 REQUEST FOR PRODUCTION NO. 25:

11  
12 ANY and ALL DOCUMENTS CONCERNING YOUR allegation in Paragraph 8 of the  
13 CONSOLIDATED COMPLAINT that "Plaintiff have suffered injury in fact and have lost money  
14 and property as a direct result of Defendant's acts."  
15

16 RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

17 Plaintiff incorporates by reference his General Objections and further objects to this  
18 Request insofar as it is overly broad, unduly burdensome, or seeks documents irrelevant to the  
19 claims or defenses of any party to this litigation. Plaintiff also objects to this request on the  
20 grounds that it violates the attorney-client privilege and attorney work product doctrine. Plaintiff  
21 also objects to this Request to the extent this Request seeks documents in SCEA's possession,  
22 custody, or control, as to which SCEA has equal access. Subject to and without waiving the  
23 foregoing objections, Plaintiff is willing to meet and confer to clarify what this request seeks  
24 and/or narrow this request to appropriate relevant areas.  
25

26 REQUEST FOR PRODUCTION NO. 26:  
27  
28

1 ANY and ALL COMMUNICATIONS with, between or among ANY PERSON, including  
2 but not limited to members of the class you propose in Paragraph 70 of the CONSOLIDATED  
3 COMPLAINT, that YOU have seen, read, sent, received, viewed, or heard, CONCERNING PS3,  
4 SCEA, the PSN, or any matter asserted in this litigation.  
5

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

7 Plaintiff incorporates by reference his General Objections and further objects to this  
8 Request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous and  
9 seeks documents irrelevant to the claims or defenses of any party to this litigation or not  
10 reasonably calculated to lead to the discovery of admissible evidence. In particular, the Request  
11 seeks information that is not relevant to any claim or defense in this action insofar as it seeks  
12 documents concerning products made by SCEA other than the PS3. Plaintiff also objects to this  
13 Request on the ground that it seeks information protected by the attorney-client privilege and  
14 attorney work product doctrine. Subject to and without waiving the foregoing objections, Plaintiff  
15 is willing to meet and confer to clarify what this request seeks and/or narrow this request to  
16 appropriate relevant areas.  
17

18 REQUEST FOR PRODUCTION NO. 27:  
19

20 ANY and ALL agreements Antal Herz has entered into with his counsel in the above-  
21 captioned litigation, including, but not limited to, ANY and ALL engagement agreements.  
22

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

24 Plaintiff incorporates by reference his General Objections. Plaintiff objects to this Request  
25 on the grounds that it is overly broad and seeks documents irrelevant to the claims or defenses of  
26 any party to this litigation. Plaintiff also objects to this Request on the ground that it seeks  
27 information protected by the attorney-client privilege and attorney work product doctrine.  
28

1 REQUEST FOR PRODUCTION NO. 28:

2 ANY and ALL DOCUMENTS CONCERNING an allegedly false posting made on or  
3 about June 6, 2010 on the website of Meiselman Denlea Packman Carton & Eberz P.C.  
4 CONCERNING this litigation, including, but not limited to, the investigation of the source of that  
5 posting, including whether it was the result of hacking; the identity of the individual(s) who  
6 allegedly hacked that website to create the posting; and YOUR COMMUNICATIONS  
7 CONCERNING the posting, including CONCERNING the alleged hack and the accurate status  
8 of this litigation.  
9  
10

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

12 Plaintiff incorporates by reference his General Objections and further objects to this  
13 Request as it is overly broad, unduly burdensome, harassing, seeks information irrelevant to the  
14 claims or defenses of any party to this litigation and not reasonably calculated to lead to the  
15 discovery of admissible evidence. Plaintiff also objects to this Request to the extent this Request  
16 seeks information in SCEA's possession, custody, or control, as to which SCEA has equal access.  
17 Plaintiff also objects to the term "hack" which is vague and ambiguous, and when read in  
18 conjunction with other defined and undefined terms would impose an undue burden on Plaintiff to  
19 speculate as to what documents might possibly relate to the subject of the request, and then  
20 produce those documents. Plaintiff also objects to this Request to the extent it seeks information  
21 protected by the attorney-client privilege and/or work product doctrine. To the extent the Request  
22 seeks data concerning non-parties, Plaintiff objects that this Request imposes annoyance and  
23 embarrassment, and is oppressive as it seeks information the production of which violates state or  
24 federal laws or regulations prohibiting the dissemination of certain data, or otherwise seeks  
25 private, personal or confidential data concerning non-parties. Defendant is also directed to the  
26  
27  
28

1 letter from Plaintiffs' counsel dated September 16, 2010 addressed to Luanne Sacks outlining  
2 Plaintiffs' objections to Defendant's request for the production such items. Therefore, Plaintiff  
3 will not produce any of the requested items in his possession, custody, or control without an  
4 appropriate order from this Court

5 **REQUEST FOR PRODUCTION NO. 29:**  
6

7 ANY and ALL DOCUMENTS CONCERNING YOUR nicknames, handles, or other  
8 moniker YOU use other than YOUR name when COMMUNICATING on Internet websites,  
9 Internet postings, chat rooms, or blog posts.  
10

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

12 Plaintiff incorporates by reference his General Objections and further objects to this  
13 Request as it is overly broad, unduly burdensome, vague and ambiguous, seeks documents  
14 irrelevant to the claims or defenses of any party to this litigation or not reasonably calculated to  
15 lead to the discovery of admissible evidence. Plaintiff also objects to this Request to the extent  
16 this Request seeks documents in SCEA's possession, custody, or control, as to which SCEA has  
17 equal access. Subject to and without waiving the foregoing objections, Plaintiff is willing to meet  
18 and confer to clarify what this request seeks and/or narrow this request to appropriate relevant  
19 areas.  
20

21 **REQUEST FOR PRODUCTION NO. 30:**  
22

23 ANY and ALL DOCUMENTS CONCERNING any hack or "jailbreak" of the PS3,  
24 including ANY and ALL DOCUMENTS CONCERNING COMMUNICATIONS YOU have had  
25 with a PERSON who has hacked the PS3.  
26

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**  
28



1 Plaintiff incorporates by reference his General Objections and further objects to this  
2 Request insofar as it is overly broad, unduly burdensome, vague and ambiguous or seeks  
3 documents irrelevant to the claims or defenses of any party to this litigation. Plaintiff also objects  
4 to this request on the grounds that it violates the attorney-client privilege and attorney work  
5 product doctrine. Plaintiff also object to the terms and phrases "HACK or JAILBREAK," which  
6 are vague and ambiguous, and when read in conjunction with other defined and undefined terms  
7 would impose an undue burden on Plaintiff to speculate as to what documents might possibly  
8 relate to the subject of the request, and then produce those documents. Plaintiff also objects to this  
9 Request to the extent this Request seeks documents in SCEA's possession, custody, or control, as  
10 to which SCEA has equal access.  
11

12  
13 **REQUEST FOR PRODUCTION NO. 31**

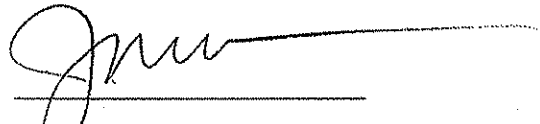
14  
15 DOCUMENTS sufficient to establish Antal Herz's employment history.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

17 Plaintiff incorporates by reference his General Objections and further objects to this  
18 Request as it is violates Plaintiff's privacy rights or the privacy rights of third parties, is overly  
19 broad, unduly burdensome, vague and ambiguous, and seeks documents irrelevant to the claims or  
20 defenses of any party to this litigation or not reasonably calculated to lead to the discovery of  
21 admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff is willing  
22 to meet and confer to clarify what this request seeks and/or narrow this request to appropriate  
23 relevant areas.  
24  
25  
26  
27  
28

1 Dated: October 28, 2010

HAUSFELD LLP

2  
3  
4 

James Pizzirusso (*Pro hac vice*)  
1700 K. St., NW, Suite 650  
Washington, DC 20006  
Telephone: 202-540-7200  
Facsimile: 202-540-7201

8 James A. Quadra  
9 Rebecca Coll  
10 **CALVO & CLARK, LLP**  
11 One Lombard Street  
12 San Francisco, California 94111  
13 Telephone: 415-374-8370  
14 Facsimile: 415-374-8373

15 Rosemary M. Rivas  
16 Tracy Tien  
17 **FINKELSTEIN THOMPSON LLP**  
18 100 Bush Street, Suite 1450  
19 San Francisco, California 94104  
20 Telephone: 415-398-8700  
21 Facsimile: 415-398-8704  
22  
23  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2  
3 **IN RE SONY PS 3 "OTHER OS" LITIGATION**

4 **CASE NO. C 10-1811 RS**

5  
6 **WASHINGTON, DC**

7 I am employed in Washington, DC. My business address is 1700 K St., NW, Ste 650,  
8 Washington, DC 2006. I am over the age of eighteen years and am not a party to the within  
action;

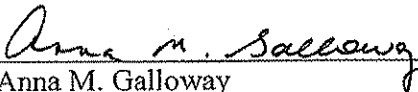
9 On October 28, 2010, I served the following document(s) entitled **RESPONSES AND**  
10 **OBJECTIONS OF PLAINTIFF ANTEL HERZ TO SCEA'S REQUEST FOR**  
11 **PRODUCTION OF DOCUMENTS AND THINGS** on DEFENDANT in this action by placing  
true copies thereof enclosed in sealed envelopes addressed as follows:

12 **Luanne Sacks**  
13 **Carter Ott**  
14 **DLA Piper LLP**  
15 **555 Mission Street, Suite 2400**  
**San Francisco, California 94105**

16 **BY OVERNIGHT MAIL:** By placing a true copy thereof in a sealed envelope addressed as  
above, and placing it for and mailing following ordinary business practices. I am readily familiar  
17 with the firm's practice of collection and processing correspondence, pleadings and other matters  
for overnight mailing with Federal Express. The correspondence, pleadings and other matters are  
18 deposited with Federal Express with postage thereon fully prepaid in Washington, DC, on the  
same day in the ordinary course of business. I am aware that on motion of the party served,  
19 service is presumed invalid if the postal cancellation date or postage meter date is more than one  
day after date of deposit for mailing in affidavit.

20  
21 I declare that I am employed in the office of a member of the bar of this Court, or one admitted pro  
hac vice, and at whose direction the service was made.

22 Executed on October 28, 2010, at Washington, DC.

23  
24   
25 Anna M. Galloway

26 4852-7100-8775