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E-Filed 1/7/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re SONY PS3 "Other OS"
LITIGATION

CASE No. 3:10-CV-01811 RS (EMC)

**STIPULATION TO RELATE AND
CONSOLIDATE ACTIONS**

JAMES ALLEE, on behalf of himself and
all others similarly situated,

CASE No. 4:10-CV-05179 (DMR)

Plaintiff,

vs.

SONY COMPUTER
ENTERTAINMENT AMERICA, INC.,

Defendant.

JAMES GIRARDI, on behalf of himself
and all others similarly situated,

CASE No. 3:10-CV-05224 (EDL)

Plaintiff,

vs.

SONY COMPUTER ENTERTAINMENT
AMERICA, LLC,

Defendant.

1 Pursuant to Local Rules 3-12 and 6-2, Fed. R. Civ. P. 42, and the Stipulation and Case
2 Management Order Number 1 as Modified by the Court (“CMO #1”) (Docket #65), IT IS
3 HEREBY STIPULATED as follows:

4 WHEREAS, the Court entered CMO #1 on June 30, 2010 which, among other things
5 consolidated seven related class actions pending before this Court and ordered that those
6 consolidated matters be captioned *In re Sony PS3 “Other OS” Litigation* (“*Other OS*”), Case No.
7 CV-10-01811-RS; appointed Interim Co-Lead Counsel; and ordered that Plaintiffs file a
8 Consolidated Class Action Complaint. *See* Docket #65.

9 WHEREAS, CMO #1 also specifically provides that “terms of this Order shall apply to
10 actions later instituted in, removed to, or transferred to this Court that involve the same or
11 substantially similar issues of law and fact, subject to applicable rules.” Docket #65, 4:20-22.

12 WHEREAS, pursuant to the Case Management Order, Consolidated Plaintiffs in the *Other*
13 *OS* matter, filed a Consolidated Class Action Complaint on July 30, 2010 (*see* Docket #76) which
14 is “deemed the operative complaint, superseding all complaints filed in this action, or any of the
15 actions to be consolidated hereunder or in any related cases.” Docket #65, 7:16-17.

16 WHEREAS, defendant Sony Computer Entertainment America LLC (“SCEA”) thereafter
17 filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and a motion to strike pursuant to
18 Fed. R. Civ. P. 12(f) and 23 to the Consolidated Class Action Complaint on September 10, 2010.
19 The parties have fully briefed those motions, and the Court heard the parties’ arguments on
20 November 4, 2010.

21 WHEREAS, a separate class action titled *James Allee, et al. v. Sony Computer*
22 *Entertainment America, Inc.* (“*Allee*”) was initiated on July 28, 2010 in the Circuit Court of
23 Milwaukee County, Wisconsin; removed to the United States District Court, Eastern District of
24 Wisconsin; and, on November 10, 2010, transferred to this District.

25 WHEREAS, a separate class action titled *James Girard, et al. v. Sony Computer*
26 *Entertainment America, LLC* (“*Girardi*”) was initiated on November 17, 2010 in this District.

27 WHEREAS, *Allee* and *Girardi* are related to the *Other OS* consolidated actions in that (i)
28 the actions are premised on the PlayStation®3 gaming console’s *Other OS* feature and the release

1 of Firmware Update 3.21 that, if downloaded, disabled that feature; (ii) the proposed class in the
2 *Other OS* consolidated actions overlaps and is broader than those asserted in *Allee* and *Girardi*;
3 and (iii) the *Allee* and *Girardi* actions raise claims and seek relief similar to that of the *Other OS*
4 consolidated actions.

5 WHEREAS, the parties agree that the *Allee* and *Girardi* Actions pending before the Court
6 meet the criteria set forth in CMO #1 and should be consolidated with the pending *Other OS*
7 actions.

8 WHEREAS, all served parties, through their respective counsel have stipulated to the
9 terms provided herein.

10 **IT IS HEREBY AGREED TO AS FOLLOWS:**

11 1. The *Allee* and *Girardi* actions shall be related and consolidated with the *Other OS*
12 actions as set forth more fully in the CMO #1. Accordingly, the *Allee* and *Girardi* actions are
13 hereby consolidated into *In re Sony PS3 "Other OS" Litigation ("Other OS")*, Case No. CV-10-
14 01811-RS. The terms of CMO #1 entered in the *Other OS* action shall apply equally to the
15 parties and counsel in the *Allee* and the *Girardi* actions.

16 2. All parties agree that the pending Consolidated Complaint is the operative,
17 superseding complaint and any motions filed as to that Complaint still stand. Any class
18 certification order as to the *Other OS* action, or any orders on SCEA's pending motion to dismiss
19 and/or motion to strike in the *Other OS* action, will be deemed binding on the *Allee* and *Girardi*
20 actions.

21 3. In the interest of efficiency and economy, SCEA need not respond separately to
22 the *Allee* or *Girardi* Complaints.

23 4. This Order may be modified, supplemented, or superseded by order of the Court or
24 upon the motion of any party for good cause shown.

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Dated: January 4, 2011

FINKELSTEIN THOMPSON LLP

By: /s/ Rosemary M. Rivas
Rosemary M. Rivas
Other OS Plaintiffs' Interim Co-Lead Counsel

Dated: January 4, 2011

CALVO & CLARK, LLP

By: /s/ James A. Quadra
James A. Quadra
Other OS Plaintiffs' Interim Co-Lead Counsel

Dated: January 4, 2011

HAUSFELD LLP

By: /s/ James Pizzirusso
James Pizzirusso (*Pro hac vice*)
Other OS Plaintiffs' Interim Co-Lead Counsel

Dated: January 4, 2011

ADEMI & O'REILLY, LLP

By: /s/ David Syrios
Guri Ademi
Shpetim Ademi
David J. Syrios
John D. Blythin
Counsel for Plaintiff James Allee

Dated: January 4, 2011

BARNOW AND ASSOCIATES, P.C.

By: /s/ Ben Barnow
Ben Barnow
Counsel for Plaintiff James Allee

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Dated: January 4, 2011

SCHUBERT JONCKHEER & KOLBE LLP

By: /s/ Willem F. Jonckheer
Robert C. Schubert
Willem F. Jonckheer
Jason Andrew Pikler
Counsel for Plaintiff James Girardi

Dated: January 4, 2011

DLA PIPER LLP (US)

By: /s/ Luanne Sacks
Luanne Sacks
*Counsel for defendant Sony Computer
Entertainment America LLC*

I, Rosemary M. Rivas, am the ECF user whose identification and password are being used to file the foregoing Stipulation To Relate And Consolidate Actions. I hereby attest that the above-referenced signatories to this stipulation have concurred in this filing.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED, AND IT IS FURTHER ORDERED THAT:

1. The Clerk shall relate *Allee, et al. v. Sony Computer Entertainment America, Inc.*, Case No. 4:10-CV-05179 (DMR) and *Girardi, et al. v. Sony Computer Entertainment America, LLC*, Case No. 3:10-cv-05224 (EDL), to Case No. C 10-1811 RS (EMC), and close the files on the *Allee* and *Girardi* actions.

2. All filings hereafter shall be made exclusively in Case No. C 10-1811 RS (EMC).

Dated: 1/7/11

By: 

Honorable Richard Seeborg
United States District Court Judge