

1 LUANNE SACKS, Bar No. 120811
 luanne.sacks@dlapiper.com
 2 CARTER W. OTT, Bar No. 221660
 carter.ott@dlapiper.com
 3 **DLA PIPER LLP (US)**
 555 Mission Street, Suite 2400
 4 San Francisco, CA 94105
 Tel: 415.836.2500
 5 Fax: 415.836.2501

6 Attorneys for Defendant
 SONY COMPUTER ENTERTAINMENT
 7 AMERICA LLC (erroneously sued as "Sony
 Computer Entertainment America Inc.")
 8

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

12
 13 In re SONY PS3 "OTHER OS"
 LITIGATION

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

**DEFENDANT'S REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT OF
 OPPOSITION TO PLAINTIFFS' MOTION
 TO COMPEL AND MOTION FOR
 PROTECTIVE ORDER**

Date: February 9, 2011
 Time: 10:30 a.m.
 Judge: Hon. Edward M. Chen
 Courtroom: C, 15th Floor

1 Defendant Sony Computer Entertainment America LLC (“SCEA”) respectfully requests
2 that the Court take judicial notice of certain documents and information cited in its Opposition
3 papers.

4 **I. REQUEST FOR JUDICIAL NOTICE**

5 Pursuant to Federal Rule of Evidence 201, SCEA requests that the Court take judicial
6 notice of the following documents, each of which is attached to the accompanying Declaration of
7 Carter Ott (“Ott Declaration”):

8 1. The Stipulated Protective Order For Complex Litigation, from *In re Sony PS3*
9 *Litigation*, United States District Court, Northern District of California (Case No. CV 09-04701
10 (MHP)). Ott Declaration, Exhibit C.

11 2. The Class Action Complaint, from *Jonathan Huber v. Sony Computer*
12 *Entertainment America LLC*, United States District Court, Northern District of California (Case
13 No. CV 10 2213). Ott Declaration, Exhibit D.

14 3. The court-approved Proposed Protective Order, from *Rambus, Inv. v. Nvidia*
15 *Corporation*, United States District Court, Northern District of California (Case Nos. 3-08-cv-
16 03343-SI and 3:08-cv-05500-SI). Ott Declaration, Exhibit E.

17 4. The Complaint for Injunctive Relief And Damages Based On Violations Of Digital
18 Millenium Copyright Act; Violations Of The Computer Fraud And Abuse Act; Contributory
19 Copyright Infringement; Violations Of The California Comprehensive Computer Data Access
20 And Fraud Act; Breach Of Contract; Tortious Interference With Contractual Relations; Common
21 Law Misappropriation; And Trespass, from *Sony Computer Entertainment America LLC v.*
22 *George Hotz et al.*, United States District Court, Northern District of California (Case No. CV11-
23 0167-SI). Ott Declaration, Exhibit F.

24 5. The Declaration Of Bret Mogilefsky In Support Of *Ex Parte* Motion For
25 Temporary Restraining Order And Order To Show Cause Re Preliminary Injunction; Order For
26 Impoundment, from *Sony Computer Entertainment America LLC v. George Hotz et al.*, United
27 States District Court, Northern District of California (Case No. CV11-0167-SI). Ott Declaration,
28 Exhibit H.

1 **II. JUDICIAL NOTICE IS APPROPRIATE**

2 **A. The Court May Take Judicial Notice of Court Records**

3 Federal Rules of Evidence 201 allows a court to take judicial notice of court records,
4 including its own records from other proceedings and records of state courts. Specifically,
5 Federal Rules of Evidence 201 permits a court to take judicial notice of, *inter alia*, adjudicative
6 facts “not subject to reasonable dispute in that [they are] . . . capable of accurate and ready
7 determination by resort to sources whose accuracy cannot reasonably be questioned.” It is
8 axiomatic that courts may take judicial notice of documents filed and orders or decisions entered
9 in any federal or state court.¹ On this basis, the Court may take judicial notice of Exhibits C and
10 H to the Ott Declaration.

11 Dated: January 14, 2011

12 DLA PIPER LLP (US)

13 By: /s/ Luanne Sacks

14 LUANNE SACKS
15 Attorneys for Defendant
16 SONY COMPUTER ENTERTAINMENT
17 AMERICA LLC

18
19
20
21
22
23
24
25 ¹ See *United States v. Warneke*, 199 F.3d 906, 909 fn. 1 (7th Cir. 1999); *Doran v. Eckold*, 409
26 F.3d 958, 962 fn. 1 (8th Cir. 2005); *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002)
27 (appellate court judicially noticed state appellate opinion and briefs); *E.I. DuPont de Nemours &*
28 *Co., Inc. v. Cullen*, 791 F.2d 5, 7 (1st Cir. 1986) (courts may take judicial notice of a complaint
filed in a related state court action); see also *Rothman v. Gregor*, 220 F.3d 81, 92 (2nd Cir. 2000);
Kinnett Dairies, Inc. v. Farrow, 580 F.2d 1260, 1277 (5th Cir. 1978) (courts may take judicial
notice of materials in its own files from prior proceedings); *Lynch v. Leis*, 382 F.3d 642, 648 fn. 5
(6th Cir. 2004).