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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"   CASE NO. 3:10-CV-01811 RS (EMC)
    LITIGATION
14   **DECLARATION OF LUANNE SACKS IN
                                       SUPPORT OF OPPOSITION TO MOTION
15   TO COMPEL AND MOTION FOR
                                       PROTECTIVE ORDER**
16
                                       Date: February 9, 2011
17   Time: 10:30 a.m.
                                       Judge: Hon. Edward M. Chen
18   Courtroom: C, 15th Floor

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DLA PIPER LLP (US)
SAN FRANCISCO

WEST\222947988.2   DECL. OF L. SACKS ISO OPPOSITION TO DISCOVER MOTIONS
                                    CASE NO. 3:10-CV-01811 RS (EMC)

I, Luanne Sacks, declare:

1. I am an attorney at law duly licensed to practice before this Court and am a partner with the law firm of DLA Piper LLP (US), attorneys for defendant Sony Computer Entertainment America LLC ("SCEA"). I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would competently testify thereto.

2. I submit this declaration to clarify certain points the Class Representatives make in their Motion to Compel and Motion for Protective Order regarding the parties' discovery meet and confer and discussions regarding Sony Computer Entertainment Inc.'s ("SCEI") documents. As an initial matter, SCEA did not globally decline to respond to the Class Representatives' First Set of Requests for Production of Documents (the "RFPs") on the basis that all possible responsive documents are possessed by SCEI. In fact, SCEA has repeatedly confirmed that it will produce documents responsive to the RFPs in its possession, custody, or control, including any documents that it received from SCEI.

3. Because the discovery obligation set forth in Class Representatives' RFPs could potentially be read to include SCEI documents not in SCEA's possession, custody, or control, SCEA made clear in its responses to the RFPs that it would only produce those documents in its possession, custody, or control. *See* R. Rivas Decl. ISO Motion to Compel and Motion for Protective Order ("Rivas Decl.") (Docket #114), Ex. B, 3:19-22; Ex. C, 4:20-26. During an October 29, 2010 meet and confer among the parties, I discussed this objection with Class Counsel, and specifically informed them that we would produce SCEI documents SCEA possessed but that we would not produce SCEI documents that that company had not shared with SCEA in the ordinary course of business. I also advised Class Counsel during this meeting that SCEA had no ability to demand production of responsive documents from SCEI.

4. Ms Rivas attached to her declaration a November 10, 2010 letter that ostensibly describes that meet and confer, sent to my office nearly two weeks after the fact. Rivas Decl. (Docket #114), Ex. H. But she failed to attach my office's email response to that letter, which included numerous clarifications and corrections to Ms. Rivas' letter. Attached hereto as Exhibit A is a true and correct copy of this response.

5.   At no time during this parties' meet and confer or otherwise did SCEA state that it does not have documents responses to RFPs Nos. 5 through 7 or 10 through 13. In fact, to the contrary, we agreed to produce documents responsive to these requests in SCEA possession, custody, or control. My office's response to Ms. Rivas' November 10 letter (Exhibit A) confirms that this discussion was lengthy and detailed and that it was our understanding at that time that any concerns Class Counsel had about obtaining documents responsive to these requests would be resolved via stipulation, as explained below.

6.   In the course of the parties' October 29, 2010 meet and confer, Class Counsel indicated that if they did not obtain the access to SCEI documents that they sought, they would seek to name SCEI as a defendant in the above-captioned action. At that time, I offered that SCEA would consider stipulating to ask SCEI if it would be willing to produce documents related to RFPs Nos. 5 through 7 and 10 through 13, in exchange for an agreement that SCEI would not be named as party.

7.   Thereafter, following a November 15, 2010 meet and confer, Class Counsel declined this offer, demanding that we broaden the scope of documents SCEA would ask SCEI to provide to all documents responsive to their RFPs, include additional terms regarding Fed. R. Civ. P. 30(b)(6) depositions of SCEI representatives, and that we incorporate these terms into a writing for their review and approval.

8.   On December 8, 2010, my office provided Class Counsel with a written stipulation along the lines that we had discussed. *See* Rivas Decl. (Docket #114), Ex. M. Class Counsel, however, responded via email that day by rejecting the proposal they had previously asked us to put into writing, and offered a revised stipulation providing, among other things, that all of SCEI's actions would be imputed on SCEA. Attached hereto as Exhibit B is a true and correct copy of this email, attaching a revised version of the stipulation. Not surprisingly, we were not willing to agree to this unacceptable term, and responded accordingly. *See* Rivas Decl. (Docket #114), Ex. N.

9.   Finally, at no point in the parties' meet and confer regarding SCEA's responses to Class Representatives' RFPs did they discuss the timing for production pursuant to the Class

DECL. OF L. SACKS ISO OPPOSITION TO DISCOVER MOTIONS
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Representatives' proposed motion to compel. In fact, the parties agreed that further production would be conducted consistent with agreed upon keyword terms, and the list of such keyword terms is still under review and analysis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of January, 2010, in San Francisco, California.

          ___/s/ Luanne Sacks_____
          LUANNE SACKS