

CALVO FISHER & JACOB LLP

ONE LOMBARD STREET
SAN FRANCISCO, CA 94111
P: 415.374.8370 F: 415.374.8373
WWW.CALVOFISHER.COM

February 11, 2011

Hon. Richard Seeborg
United States District Court Judge
450 Golden Gate Avenue
Courtroom 3 – 17th Floor
San Francisco, CA 94102

**Re: In Re Sony PS3 “Other OS” Litigation
U.S.D.C. Case No. 3:10-cv-01811-RS**

Dear Judge Seeborg:

The last date to file a motion for class certification, and the last date to complete non-expert discovery relating to class certification, is currently set for February 28, 2011. (Docket No. 94.) Plaintiffs request a telephone conference with the Court to discuss modifying that deadline. Defendant has indicated it is in agreement that a telephone conference would be appropriate. (*See Exhibit A*, p. 7.) Plaintiffs attempted for a period of two weeks to cooperate with Defendant to submit a joint letter, but those efforts were unsuccessful. (*See generally Exhibit A*.) Given the urgency of the upcoming deadlines, Plaintiffs submit this letter to the Court and anticipate that Defendant will file its own timely response.

The February 28, 2011 class certification discovery and motion deadline should be modified for two reasons.

First, the Court has not yet ruled on Sony’s Motion to Dismiss, which was heard on November 4, 2010. It would be premature to file a motion to certify this action until these preliminary pleading issues are resolved.

Second, the parties have multiple outstanding discovery disputes which were addressed at a hearing on February 9, 2011 before Magistrate Judge Chen. Judge Chen granted in part and denied in part (a) Plaintiffs’ Motion for Protective Order, (b) Sony’s Motion to Compel, and (c) Plaintiffs’ Motion to Compel. (Docket No. 152.) Judge Chen ordered the parties to meet and confer and agree upon a discovery plan on the issue of Sony’s custody and control of documents in the possession of its parent headquartered in Japan, SCEI. The parties were also ordered to meet and confer regarding a stipulated protective order along certain guidelines set by Judge Chen.

In the meantime, Judge Chen ordered Sony to produce documents in its possession responsive to Plaintiffs' requests, and ordered Sony to request that SCEI produce documents in SCEI's possession which are responsive to Plaintiffs' requests. However, the day after the hearing with Judge Chen, Sony advised Plaintiffs that it would not conclude the parties' meet and confer process about ESI issues, which the parties had only barely touched upon months ago. Sony refused to meet and confer regarding how electronic documents will be produced, what metadata will be included, what custodians exist, or what search terms will be used in the production. (See Exhibit A, pp. 1-5.)

Though the parties appear to agree that the February 28, 2011 deadline should be modified, the parties disagree on *how* the date should be modified. Sony has suggested merely postponing it by 60 days. (See Exhibit A, p. 8.) Plaintiffs do not believe that, given the state of discovery, that is a realistic deadline.

Instead, Plaintiffs request that the Court vacate the February 28, 2011 deadlines to complete class certification discovery and file a motion to certify the class. Plaintiffs respectfully request that the Court reset these deadlines at the next Case Management Conference, which Plaintiffs submit should be scheduled after the Court rules on Sony's Motion to Dismiss. At that time, the parties can set forth their positions about appropriate deadlines.

A short continuance of 60 days will not be adequate time to complete class certification discovery and file a motion to certify the class. Sony has produced only minimal documents responsive to Plaintiffs' requests, and has produced no documents it considers to be "confidential" (such as widely disseminated advertisements), notwithstanding Plaintiffs' agreement to hold such documents as "Attorneys Eyes Only" until the parties' dispute regarding a protective order can be resolved.

In addition, it is unclear how long Sony will take to produce documents now that Magistrate Judge Chen has ordered it to do so. Sony is refusing to even discuss how electronic documents should be produced, what search terms or phrases should be used, and where and how the documents are stored. If Sony persists in this position, document production will be even further delayed while Plaintiffs return to Judge Chen to address this latest roadblock. Even if Sony agrees to meet and confer about how documents will be produced, Plaintiffs anticipate that it will take months to receive Sony's documents and conduct follow up discovery, including written interrogatories and depositions.

In short, the most efficient approach is to vacate the currently scheduled deadlines and hold a Case Management Conference after the Court rules on Sony's Motion to Dismiss.

Plaintiffs are prepared to further address these issues during a telephone conference, if the Court deems it appropriate. We appreciate the Court's time and attention to this matter.

Sincerely,

/s/ Rebecca Coll

Rebecca Coll

James A. Quadra (SBN 131084)
Rebecca M. Coll (SBN 184468)
Calvo Fisher & Jacob, LLP
One Lombard Street, Second Floor
San Francisco, California 94111
Telephone: (415) 374-8370
Facsimile: (415) 374-8373

Rosemary M. Rivas (SBN 209147)
Finkelstein Thompson LLP
100 Bush Street, Suite 1450
San Francisco, California 94115
Telephone: (415) 398-8700
Facsimile: (415) 398-8704

James Pizzirusso (*Pro Hac Vice*)
Hausfeld, LLP
700 K. Street NW, Suite 650
Washington, DC 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201

cc: Luanne Sacks
Carter Ott

EXHIBIT A

Rebecca Coll

From: Ott, Carter <Carter.Ott@dlapiper.com>
Sent: Thursday, February 10, 2011 8:03 PM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Rebecca,
Obviously, I do not agree with your characterization of these issues. For one, I am not refusing to meet and confer. Rather, I'm asking that - if you wish to meet and confer - you provide us with a list of items that you would like to discuss so that we can adequately assess when we will have the time to discuss them. Also, in the past, you have provided us with an agenda on the eve of our discussions - on one occasion, shortly before our teleconference. This has not been productive.

The agenda that you attached to your email (below), lists many items that we have already discussed, as you admit. It also lists a number of items that I believe that we have resolved. For example, during our discussion on October 28, we asked why you would need metadata in an action regarding false misrepresentations. To date, you have not provided an explanation. Again, please provide us with a list of the items that you believe that we need to discuss (rather than a list of items, some of which we have discuss and others that we have already apparently resolved).

I understand from your email below that you do not believe that our production to date is satisfactory in form. Although we produced these documents nearly three months ago, this is the first time that we have heard this from you or your co-counsel. In the future, please promptly inform us if you have any issues with the form of our production. I should also point out that you also produced documents in the form of scanned images; a form which you apparently now state is insufficient.

Finally, I see no reason why we cannot amicably resolve these issues without the need to include threats of court action in every email. I also believe that these issues are resolved more easily, and without the need for threats, if discussed over the phone or in person. I am in San Diego all day tomorrow for a hearing, but I am free to discuss next week.

Thank you,
Carter



Carter W. Ott
Associate

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105

T 415-836-2538

F 415-659-7338

M 415-336-9408

carter.ott@dlapiper.com

www.dlapiper.com

From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Thursday, February 10, 2011 7:28 PM
To: Ott, Carter
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Carter-

Your statement that you asked me to send you a list of issues is false. Once again, at a minimum, we need to come to an agreement as to search terms, format of production, the relevant custodians, and what metadata will be included. For a more thorough list, please see the attached agenda, which was previously provided to you in advance of the last meeting that was supposed to address these issues. That meeting was cut short and nothing was resolved other than the issue of preservation letters. Given that we did not resolve any issues relating to how documents should be produced, there *is* a problem with the format of Sony's production (scanned images)-- a problem that will be exacerbated if you intend to produce electronically stored documents in that manner. We need to meet and confer on these issues. You are apparently still refusing to do so.

You also promised months ago to provide a list of proposed search terms, which we agreed to review, and consider at that time whether we would agree to your approach as to search terms. You never sent us the list.

Regarding the letter to Judge Seeborg, you have been stringing us along since I first contacted you about the issue on January 18. I sent you our portion of the letter on Monday and it is not very lengthy or controversial. It is now Thursday. You had previously stated you needed three days to respond. You are continuing to stall. We will send a letter to Judge Seeborg tomorrow and you may submit a response if you wish.

Thanks.

Becca Coll
Calvo Fisher & Jacob, LLP
One Lombard Street
San Francisco, CA 94111
T: 415-374-8370

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From: Ott, Carter [mailto:Carter.Ott@dlapiper.com]
Sent: Thursday, February 10, 2011 3:34 PM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Rebecca,
Based on the fact that three of your co-counsel were cc'd on your email (attached) and not one of them indicated that the March 10 date was in error and based on James' prior representation that you and your co-counsel agree on all communications to us before they are sent, I assumed that that date was correct. Under the circumstances, including, that you sent us your email just before close of business while we were obviously preparing for a hearing the next morning, I was not going to question it. Given this error, I think it makes sense to give us time to review and draft our part of your letter.

With regard to the ESI conference, you may recall from our recent conversation that I asked you to explain to me what information we would discuss. You told me that you believe we need to discuss the format of our production as well as other issues. Without agreeing that a further ESI conference is necessary, I asked that you provide us with a list of any other issues you believe that we need to discuss so that I could determine whether such a further conference is necessary. To date, you have not provided me with that list. My only conclusion was that you do not believe that we need to discuss any issues other than the format of our production. You were free to point to any issues with our production, based on the over 2,000 pages of documents we have already produced. To date, you have not. If you have any issue with the format of this production and the use of this format going forward, please let us know.

Thank you,
Carter



Carter W. Ott
Associate

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105

T 415-836-2538

F 415-659-7338

M 415-336-9408

carter.ott@dlapiper.com

www.dlapiper.com

From: Rebecca Coll [<mailto:rcoll@calvofisher.com>]
Sent: Thursday, February 10, 2011 3:09 PM
To: Ott, Carter
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Carter

The reference to March 10 was obviously an error. March 10 would be after the current February 28 deadline to file a motion, and would obviously moot the entire issue. You understood the urgency of the situation and your claim that you were confused is utterly disingenuous. We will submit a letter to Judge Seeborg and you may respond if you wish.

With regard to the ESI conference, if you believe we have reached an agreement on the format in which documents should be produced, what metadata will be included, and/or what search terms will be utilized, please advise me as to the agreements we reached. You cannot decide these issues unilaterally. You also misled me by promising to get back to me with a date, and refrained from disclosing this new position until *after* the hearing with Judge Chen, which I do not believe the Court will appreciate or condone. If you persist in taking this position, we need to set a time to meet and confer in advance of our contacting Magistrate Judge Chen regarding your refusal to comply with the Federal Rules.

Thanks.

Becca Coll
Calvo Fisher & Jacob, LLP
One Lombard Street
San Francisco, CA 94111
T: 415-374-8370

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From: Ott, Carter [mailto:Carter.Ott@dlapiper.com]
Sent: Thursday, February 10, 2011 1:50 PM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Rebecca,
On Tuesday, you requested that we provide you with our part of the letter by [Thursday, March 10](#) (see attached). Now, you demand that we provide it in several hours. We are at a loss for the reason for this sudden change.

With regard to an ESI conference, we formerly met and conferred about those issues. While I agree that we need to meet and confer on the issues Judge Chen covered in his order, I am not aware of any other issues that we need to discuss that we have not already covered.

I will check on our availability on Tuesday or Wednesday.

Thank you,
Carter



Carter W. Ott
Associate

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105

T 415-836-2538
F 415-659-7338
M 415-336-9408
carter.ott@dlapiper.com
www.dlapiper.com

From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Thursday, February 10, 2011 1:41 PM
To: Ott, Carter

Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Carter-

We asked you to provide your part of the letter to Judge Seeborg by noon today and we have received nothing from you. In light of the Court's rulings yesterday, please let us know right away if Sony will agree to jointly request that the Court vacate the pending class certification deadlines and set a CMC when the Court rules on Sony's Motion to Dismiss and Motion to Strike, which are currently under submission. If we do not hear from you by the close of business today, we will submit a letter to the Court on behalf of Plaintiffs.

In addition, I asked you on January 31 to provide dates for an ESI conference. You have failed to do so. As you know, the parties are required to meet and confer about ESI pursuant to Rule 26. We still have no agreement on how electronic documents are to be produced, the proposed search terms or phrases, and the relevant custodians. We need to complete the conference early next week so that SCEA can begin its document production without further delay. We also need to discuss issues relating to the production of the hard drive, which we can do at the same time that we discuss the format of Sony's document production.

Please let us know whether you are available on Tuesday or Wednesday next week to meet. It is important that you get back to us right away given our impending deadlines. We will also send you a draft Protective Order by Monday based on the Court's ruling.

Thanks.

Becca Coll
Calvo Fisher & Jacob, LLP
One Lombard Street
San Francisco, CA 94111
T: 415-374-8370

From: Rebecca Coll
Sent: Tuesday, February 08, 2011 4:38 PM
To: 'Ott, Carter'
Cc: James Quadra; 'rrivas@finkelsteinthompson.com'; 'jpizzirusso@hausfeldllp.com'; 'Sacks, Luanne'
Subject: RE: Sony Other OS Meet and Confer

Carter-

Please provide your part of the letter by noon on Thursday, March 10, 2011. Otherwise, given the rapidly approaching class certification deadline, we will need to submit a letter to Judge Seeborg letting him know that we attempted to cooperate to prepare a joint letter but we did not receive a timely response from you.

Thanks.

Becca Coll
Calvo Fisher & Jacob, LLP
One Lombard Street
San Francisco, CA 94111

T: 415-374-8370

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From: Rebecca Coll
Sent: Monday, February 07, 2011 4:54 PM
To: 'Ott, Carter'
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Carter,

Attached please find a draft letter with Plaintiffs' section. Please fill in your part and send it back to me as soon as possible.

Thanks

Rebecca

From: Ott, Carter [mailto:Carter.Ott@dlapiper.com]
Sent: Friday, February 04, 2011 9:02 AM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne
Subject: RE: Sony Other OS Meet and Confer

Thank you, Rebecca. I think that makes sense. Why don't you draft the letter with your section, and send to us to input ours?



Carter W. Ott
Associate

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105

T 415-836-2538

F 415-659-7338

M 415-336-9408

carter.ott@dlapiper.com

www.dlapiper.com

From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Thursday, February 03, 2011 6:23 PM
To: Ott, Carter

Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne

Subject: RE: Sony Other OS Meet and Confer

Carter-

This is a simple issue. The clerk said we should submit a joint letter if possible and I can't imagine why we wouldn't be able to accomplish that, with separate sections stating our positions. If you are nevertheless insisting on submitting separate letters we will proceed as you set forth in your email.

Rebecca

From: Ott, Carter [mailto:Carter.Ott@dlapiper.com]

Sent: Thursday, February 03, 2011 9:28 AM

To: Rebecca Coll

Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne

Subject: RE: Sony Other OS Meet and Confer

Rebecca,

Thank you for following up on this. At this time, we believe that the best way to address the issue is via a telephonic conference with Judge Seeborg, after we have submitted letters stating our respective positions. Please provide us with the date on which you propose to file your letter. We will plan on filing our response three days after.

Thank you,
Carter



Carter W. Ott
Associate

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105

T 415-836-2538

F 415-659-7338

M 415-336-9408

carter.ott@dlapiper.com

www.dlapiper.com

From: Rebecca Coll [mailto:rcoll@calvofisher.com]

Sent: Monday, January 31, 2011 1:57 PM

To: Ott, Carter

Cc: James Quadra; rrivas@finkelsteinthompson.com;
jpizzirusso@hausfeldllp.com; Sacks, Luanne

Subject: RE: Sony Other OS Meet and Confer

Carter-

Pursuant to our conversation this morning I called Judge Seeborg's clerk and inquired about the Court's preference with respect to conference calls to discuss scheduling matters. She responded that Judge Seeborg prefers that the parties submit a joint letter requesting such a conference call and setting forth our competing positions, or if that is not possible, then competing letters. Judge Seeborg will review the letter(s) and determine whether a conference call is appropriate.

As we discussed, Plaintiffs' position is that the class certification discovery cut-off and motion deadline should be vacated, and a CMC should be set when the Court issues its ruling on SCEA's Motion to Dismiss. You indicated you would get back to me with Sony's position.

Please let us know whether you will agree to submit a joint letter setting forth our competing positions and requesting a telephone conference with Judge Seeborg. We would like your response by close of business tomorrow.

Finally, in response to your request regarding your administrative motion to seal exhibits, we have no objection.

Thanks

Rebecca Coll

From: Ott, Carter [Carter.Ott@dlapiper.com]

Sent: Thursday, January 27, 2011 6:14 PM

To: Rebecca Coll

Cc: James Quadra; rrivas@finkelsteinthompson.com;
jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph

Subject: RE: Sony Other OS Meet and Confer

Rebecca,

We are willing to agree to continue the dates by 60 days. Your proposal for a 120-day extension is based on too many unknowns, for example, the court could issue an order tomorrow regarding our pleading challenges or our magistrate judge could limit discovery per the various motions such that little more than production in response to the pending requests is necessary. If necessary, we can revisit the timing in the future.

Thank you,
Carter



Carter W. Ott
Associate

DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105

T 415-836-2538

F 415-659-7338

M 415-336-9408

carter.ott@dlapiper.com

www.dlapiper.com

From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Tuesday, January 18, 2011 2:33 PM
To: Ott, Carter; Sacks, Luanne
Cc: James Quadra; rrivas@finkelsteinthompson.com;
jpizzirusso@hausfeldllp.com
Subject: Sony Other OS Meet and Confer

Luanne and Carter:

As you know, the last date to file a motion for class certification, and the last date to complete non-expert discovery relating to class certification, is set for February 28, 2011. Given (a) the parties' outstanding discovery disputes, (b) the fact that Sony's document production has been minimal despite our agreement to hold the documents as "attorneys' eyes only" pending a ruling from the Court, and (c) the fact that we have not yet received a ruling on Sony's Motion to Dismiss, these deadlines should be moved. We request that Sony stipulate to an order postponing the foregoing deadlines by 120 days or, in the alternative, vacating the foregoing deadlines and setting a further status conference on a convenient date following the hearing on our discovery motions. Please advise us as to your position as soon as possible.

Becca Coll
Calvo Fisher & Jacob, LLP
One Lombard Street
San Francisco, CA 94111
T: 415-374-8370

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