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23  
 24 **UNITED STATES DISTRICT COURT**  
 25  
 26 **NORTHERN DISTRICT OF CALIFORNIA**

27 In Re Sony PS3 "Other OS" Litigation

28 Case No. CV-10-1811-RS

**PLAINTIFFS' ADMINISTRATIVE MOTION  
 FOR PERMISSION TO FILE REQUEST FOR  
 JUDICIAL NOTICE IN FURTHER  
 OPPOSITION TO DEFENDANT SONY  
 COMPUTER ENTERTAINMENT AMERICA,  
 LLC'S MOTION TO DISMISS**

**Local Rule 7-11**



1 **B. SCEA’S Statements in Hotz.**

2 In Hotz, SCEA sued several PS3 users for injunctive relief and damages in connection with their  
3 purported unauthorized access to and copying of SCEA’s proprietary PS3 technology. In the complaint,  
4 SCEA claimed privity of contract with the defendant PS3 users, although the users did not purchase  
5 their PS3s directly from SCEA, but rather at retail. SCEA’s complaint in Hotz (attached to the RJN as  
6 Exhibit A) states, in pertinent part, as follows:

7  
8 15. This Court has personal jurisdiction over each Defendant for the  
9 following reasons, among others:

10 (a) On information and belief, Hotz has purposely availed himself of the  
11 benefits of this district by doing business with PayPal, Inc., a company  
12 located in San Jose, California. Specifically, Hotz has utilized his PayPal  
13 account to solicit and obtain financial benefits in connection with the  
14 unlawful conduct alleged herein. Hotz is also subject to personal  
15 jurisdiction pursuant to the PlayStation Network Terms of Service and  
16 User Agreement (“PSN User Agreement”), which is attached hereto as  
17 Exhibit A. On information and belief, Hotz has used software updates  
18 delivered by SCEA for one or more PS3 Systems he is using. To obtain  
19 such software, users must consent to the terms and conditions of the PSN  
20 User Agreement, which require that both parties submit to personal  
21 jurisdiction in California and further agree that any dispute arising from or  
22 relating to this Agreement shall be brought in a court within San Mateo  
23 County, California.

24 53. All PS3 System users who have used software updates delivered  
25 by SCEA for the PS3 System are bound by the PSN User Agreement or  
26 similar agreement. A copy of the PSN User Agreement is attached as  
27 Exhibit A and incorporated herein by reference. On information and  
28 belief, Defendants herein have consented and are subject to the terms of  
the PSN User Agreement or similar agreement.

92. SCEA is informed and believes and thereon alleges that  
Defendants agreed to the terms of the PSN User Agreement or similar  
agreement and entered into that contract or similar agreement with SCEA.  
The PSN User Agreement or similar agreement is a written contract that  
limits their use of the PS3 System, related hardware, and related code,  
including restricting access and governing allowable uses.

97. SCEA has contractual relationships with users of the PlayStation  
Network.

1 SCEA further claims in its Ex Parte Motion for Temporary Restraining Order, Order to Show  
2 Case Re: Preliminary Injunction, and Order of Impoundment; Memorandum of Points and Authorities  
3 in Support (“TRO Motion”), filed on January 11, 2011, that “Hotz is bound by the ‘Playstation Network  
4 Terms of Service and User Agreement.’” RJN, Exhibit B. The Court ultimately issued the TRO sought  
5 by SCEA. RJN, Exhibit C. Thus, in Hotz, SCEA itself argues that SCEA maintains contractual privity  
6 with all PS3 users, which supports plaintiffs’ breach of implied warranty claim, and contradicts  
7 arguments made by SCEA in its motion to dismiss that claim.

8 **C. Judicial Notice Is Appropriate.**

9 The Hotz case filings discussed above are properly subject to judicial notice. Rule 201(b) of the  
10 Federal Rules of Evidence provides that courts may take judicial notice of documents that are “not  
11 subject to reasonable dispute” in that they are “(1) generally known within the territorial jurisdiction of  
12 the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy  
13 cannot reasonably be questioned.” When ruling on a motion to dismiss, courts may consider allegations  
14 contained in pleadings, exhibits to the complaint, and matters properly subject to judicial notice.  
15 Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899 (9<sup>th</sup> Cir. 2007). The Court may take  
16 judicial notice of other court proceedings, both within and without the federal system, if those  
17 proceedings have a “direct relation” to matters at issue. See e.g., U.S., ex rel. Robinson Rancheria  
18 Citizens Council v. Borneo, 971 F.2d 244, 248 (9<sup>th</sup> Cir. 1992); White v. Martel, 601 F.3d 882, 885 (9<sup>th</sup>  
19 Cir. 2010). For the reasons stated, plaintiffs respectfully submit that the Hotz filings have a “direct  
20 relation” to the issues before the Court on SCEA’s motion to dismiss.  
21

22 **CONCLUSION**

23 Plaintiffs respectfully request that their administrative motion be granted.

24 DATED: February 17, 2011

Respectfully submitted,

25 **FINKELSTEIN THOMPSON LLP**

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27 By: /s/ Rosemary M. Rivas  
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