

EXHIBIT 4

From: Rebecca Coll

Sent: Monday, March 14, 2011 2:57 PM

To: luanne.sacks@dlapiper.com; carter.ott@dlapiper.com

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

Subject: Sony Other OS Discovery Matters

Luanne and Carter:

In advance of our call on Wednesday, attached please find:

- (1) Our additions to your keyword and custodian lists; and
- (2) A subpoena to Mr. Levand.

Please advise us whether you will agree to our additions to your keywords and custodians, and whether you will accept service of the subpoena to Mr. Levand.

Thanks.

Becca Coll

Calvo Fisher & Jacob, LLP

One Lombard Street

San Francisco, CA 94111

T: 415-374-8370

This e-mail message is intended only for the use of the individual or entity named above and may contain confidential and privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error, please immediately notify us. Reply to info@calvofisher.com, and delete the message immediately. Thank you very much.

IN RE SONY PS3 “OTHER OS” LITIGATION
CASE NO. CV-10-1811-RS

SCEA’S PROPOSED KEYWORDS

“Linux”
“Operating System”
“Other OS”
“Update” within 5 of 3.21

SCEA’S CUSTODIAN LIST

Nolan Haas
Gene Gally
Jay Paten
Patrick Seybold
John Koller
Tom Boerger
Bret Mogoleski
Dominic Mallinson

ADDITIONAL KEYWORDS

Hotz
Geohot* OR “Geo Hot*”
Levand AND (PS3 OR “PS 3” OR
PlayStation* OR “Play Station*” OR Linux)
Jailbreak* OR (“jail break*”)
Jailbroken OR (“jail broken”)
Hack* AND (PS3 OR “PS 3” OR
PlayStation* OR “Play Station*” OR OS)
(Hypervisor OR “hyper visor”) AND (PS3
OR “PS 3” OR PlayStation* OR “Play
Station*” OR OS)
“April 1, 2010” AND update*
“Open platform”
“3.21”
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*”) w/25 (“personal computer” OR
PC OR *comput*)
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*”) AND (lifespan* OR “life span*”
OR “life cycle*” OR lifecycle*)
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*”) AND (unauthorized /10 (“soft
ware” OR software)
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*”) AND (“homebrew” OR “home
brew”)
(“Terra Soft” OR “TerraSoft” OR Staats OR
Kai) AND (linux OR “Other OS” OR

“OtherOS” OR “other operating system” OR
“other system software”)
(“Terra Soft” OR “TerraSoft” OR Staats OR
Kai) AND (PS3 OR “PS 3” OR
PlayStation* OR “Play Station*”)
“OtherOS”
“Other operating system”
“OS” w/25 disable*
“OS” w/25 remov*
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*” OR OS)AND “intellectual
property”
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*” OR OS) AND (piracy OR pirat*)
(PS3 OR “PS 3” OR PlayStation* OR “Play
Station*” OR OS) AND (secure OR
securit*)
“OS” AND support*
Install* w/25 (linux OR “Other OS” OR
“OtherOS” OR “other operating system” OR
“other system software”)
(“Immigration” OR “ICE”) and (PS3 OR
“PS 3” OR PlayStation* OR “Play Station*”
OR OS)
(“Air Force” OR “Airforce” OR Barnell OR
Condor) and (PS3 OR “PS 3” OR
PlayStation* OR “Play Station*” OR OS)

(PS3 OR “PS 3” OR PlayStation* OR “Play Station*” OR OS) AND (los* /10 (function* OR featur*))

(PS3 OR “PS 3” OR PlayStation* OR “Play Station*” OR “personal computer” OR PC OR *comput*) AND cluster*

“It only does everything” AND (“personal computer” OR PC OR computer)

Cell w/25 (“personal computer” OR PC OR *comput*)

“third-party system software” OR “third party system software”

“yellow dog”

Ubuntu

Fedora

“hack-a-thon” OR “Hack a thon” OR “hackathon”

(Blade OR IBM) AND (PS3 OR “PS 3” OR PlayStation* OR “Play Station*” OR OS OR Cell)

“Gravity Grid”

Khanna

(“firm ware” OR “firmware” OR Update*)

AND (upgrade* OR function* OR feature*)

Please note: Plaintiffs reserve their right to seek ESI using additional key words as discovery progresses and they have had an opportunity to review the documents SCEA has produced and the key words SCEA used to identify such information.

ADDITIONAL CUSTODIANS

Kaz Hirai—SCEA Chairman in 2006

Peter Dille—Senior VP of Marketing at SCEA as of Spring 2009.

Scott Steinberg—VP product marketing, SCEA (March 2007)

Please note: Under Rule 34, the responding party is required to search the records of all persons who may have responsive information. Plaintiffs have concerns that SCEA’s proposed custodians are insufficient. Despite Plaintiffs’ request, SCEA has still not described why it believes that its proposed custodians will cover all of Plaintiffs’ documents requests and any other individuals would just be repetitive. Moreover, SCEA has not provided Plaintiffs with an organizational chart. Plaintiffs are supplementing SCEA’s proposed list with the above additional custodians, however, this list is not exhaustive. Plaintiffs reserve their right to expand this list as additional SCEA custodians are discovered, including adding SCEI custodians depending upon how the Court rules on the parties’ dispute.

UNITED STATES DISTRICT COURT

for the

Northern District of California

Anthony Ventura, et al.

Plaintiff

v.

Sony Computer Entertainment America LLC

(In re Sony PS3 "Other OS" Litigation)

Defendant

Civil Action No. CV-10-1811-RS

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Geoffrey Levand

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: CALVO FISHER & JACOB LLP
One Lombard Street
San Francisco, California 94111

Date and Time:

03/31/2011 10:00

The deposition will be recorded by this method: stenographic method by certified stenographic reporter

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See attached Appendix A.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:

MARCH 14, 2011

CLERK OF COURT

OR

(SEN 266086)
for James A. Quadra

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiffs Ventura, et al

, who issues or requests this subpoena, are:

James A. Quadra

CALVO FISHER & JACOB LLP, One Lombard Street, San Francisco, California 94111

Telephone: 415-374-8370, Facsimile: 415-374-8373

Civil Action No. CV-10-1811-RS

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the subpoena on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other *(specify)*: _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT A TO SUBPOENA TO TESTIFY AT DEPOSITION
AND TO PRODUCE DOCUMENTS

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiffs hereby request, by and through their undersigned counsel, that Geoffrey Levand produce the documents specified in this Attachment A to the attached subpoena (“Subpoena”) at the date and place set forth therein, or at such other time and place as may be mutually agreed, in the manner prescribed by the Federal Rules of Civil Procedure, and in accordance with the Definitions and Instructions contained herein.

DEFINITIONS

1. The terms “you” and “your” refer to Geoffrey Levand.
2. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed as outside of its scope.
3. As used herein, the word “any” shall include the collective as well as the singular and shall mean “each,” “all,” and “every” and such terms shall be interchangeable.
4. As used herein, “communication” shall mean any contact, whether written, oral or otherwise, made between two or more persons, regardless of whether such contact is or was ever rendered or recorded as a document.
5. “Document” shall have the broadest possible meaning accorded to it under Rule 34 of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of this term. The term includes any electronic, handwritten, typewritten, printed, emailed, typed, photostatic, photographic, dictated or recorded document, including, but, not limited to correspondence, emails, memoranda, notes, tapes, publications, surveys, analyses, designs, diagrams, blueprints, charts, diaries, calendars, appointment books, projections,

testimony, evidence, affidavits, statements, tax returns, summaries, pamphlets, books, notebooks, prospectuses, interoffice communications, offers, notations of or relating to any sort of conversations or other communications (including but not limited to telephone conversations, emails, videoconferences or meetings), bulletins, computer printouts, teletypes, telefaxes, invoices, worksheets, and all drafts, alterations, modifications, changes or amendments of the foregoing, graphic, or manual records or representations of any kind, which are in the possession, custody or control of Defendant and/or its agents, consultants, insurers or attorneys.

6. As used herein, “contain,” “reflect,” “refer [to],” “relate to,” or “concerning” any given subject means any document or documents that comprise, constitute, embody, evidence, identify, state, deal with or are in any way pertinent to that subject, including but not limited to, documents concerning the preparation of other documents.

7. As used herein, “SCEA” shall mean Sony Computer Entertainment America LLC, formerly Sony Computer Entertainment America, Inc.

8. As used herein, “SCEI” shall mean Sony Computer Entertainment, Inc.

9. As used herein, “SCA” shall mean Sony Corporation of America.

10. As used herein, “PS3” refers to the Sony PlayStation® 3 video game console with the Install Other OS feature, which SCEA introduced on November 17, 2006.

11. As used herein, “Install Other OS” refers to the built-in feature of some models of the PS3, which allowed users to install other operating systems, such as Linux, on the console.

12. “Update 3.21” refers to the Firmware version 3.21 software update for the PS3, which SCEA released on April 1, 2010, and which intentionally disabled the “Install Other OS” feature.

INSTRUCTIONS

13. Unless otherwise indicated, the time period covered by these Requests is January 1, 2005 to present.

14. The Subpoena calls for the production of documents that are in your possession, custody, or control. If any subpoenaed documents are not produced on the basis that said documents are not in your custody and/or control, said documents should be identified, and the person in whose custody you believe said documents can be found should likewise be identified.

15. If a document was prepared in several copies or if additional copies were thereafter made, and if such copies were not identical or are no longer identical by reason of any notation or modification of any kind whatsoever, including, without limitation, notations on the front or back of any of the pages thereof, then each such non-identical copy is a separate document and must be produced.

16. Documents responsive to this Subpoena shall be produced as they are maintained in the ordinary course of business. If any portion of any document is responsive to any request below, then the entire document must be produced. Documents attached to each other should not be separated.

17. If any responsive document was at one time in existence, but has since been lost, discarded or destroyed, identify each such document by date, type, and subject matter, describe the circumstances under which the document or thing was lost, discarded or destroyed, and identify each person with knowledge of its subject matter and of the circumstances under which it was lost, discarded or destroyed.

REQUESTS

Request No. 1:

All documents that contain, reflect, refer, or relate to your written statement posted to the Cbe-oss-dev mailing list on or about August 22, 2009:

“The feature of ‘Install Other OS’ was removed from the new ‘Slim’ PS3 model to focus on delivering games and other entertainment content.

Please be assured that SCE is committed to continue the support for previously sold models that have the ‘Install Other OS’ feature and that this feature will not be disabled in future firmware releases.”

Request No. 2:

All documents that contain, reflect, refer, or relate to your written statement posted to the Cbe-oss-dev mailing list on or about February 27, 2010:

Please understand that in my position as PS3-Linux maintainer I can really only provide users with technical support for Linux and the LV1 hcall interface.

The text above was provided to me by SCE management.

Request No. 3:

All documents that contain, reflect, refer, or relate to your position or employment as lead maintainer of Linux for the PS3 game console, and also co-maintainer of the Petitboot bootloader.

Request No. 4:

All documents that contain, reflect, refer, or relate to the files you maintained at:

<<http://www.kernel.org/pub/linux/kernel/people/geoff/cell/>>.

Request No. 5:

All documents that contain, reflect, refer, or relate to communications between you and anyone at SCEA, SCEI and/or SCA concerning the “Install Other OS” feature of the PS3 including, but not limited to, the promotion of this feature, the reason for this feature, and the eventual removal of this feature from PS3 consoles.

Request No. 6:

All documents that contain, reflect, refer, or relate to communications between you and anyone at SCEA, SCEI and/or SCA concerning firmware Update 3.21.

Request No. 7:

All documents that contain, reflect, refer, or relate to communications between you and anyone at SCEA, SCEI and/or SCA concerning the ability of the PS3 to function as a computer.

Request No. 8:

All documents that contain, reflect, refer, or relate to communications between you and anyone at SCEA, SCEI and/or SCA concerning the ability of the PS3 to install Linux.

Request No. 9:

All documents that contain, reflect, refer, or relate to communications between you and anyone at SCEA, SCEI and/or SCA concerning the lifespan of the PS3.

Request No. 10:

All documents that contain, reflect, refer, or relate to communications between you and anyone at SCEA, SCEI and/or SCA concerning representations to PS3 users that updates would be provided to maintain or improve the performance of the PS3.

Request No. 11:

All documents that contain, reflect, refer, or relate to communications between you and any PS3 user concerning the “Install Other OS” feature of the PS3 including, but not limited to, the promotion of this feature, the reason for this feature, and the eventual removal of this feature from PS3 consoles.

Request No. 12:

All documents that contain, reflect, refer, or relate to communications between you and any PS3 user concerning firmware Update 3.21.

Request No. 13:

All documents that contain, reflect, refer, or relate to communications between you and any PS3 user concerning the ability of the PS3 to function as a computer.

Request No. 14:

All documents that contain, reflect, refer, or relate to communications between you and any PS3 user concerning the ability of the PS3 to install Linux

Request No. 15:

All documents that contain, reflect, refer, or relate to communications between you and any PS3 user concerning the ability of the PS3 to install Linux

Request No. 16:

All documents that contain, reflect, refer, or relate to communications between you and any PS3 user concerning any promise or representation that updates would be provided to maintain or improve the performance of the PS3.

Dated: March 14, 2011

CALVO FISHER & JACOB LLP

/s/ James A. Quadra

James A. Quadra

Rebecca Coll

One Lombard Street

San Francisco, California 94111

Telephone: 415-374-8370

Facsimile: 415-374-8373

FINKELSTEIN THOMPSON LLP

/s/ Rosemary M. Rivas

Rosemary M. Rivas

Danielle T. Stoumbos

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HAUSFELD LLP

/s/ James Pizzirusso

James Pizzirusso (*Pro hac vice*)

Spencer H. Jenkins

1700 K St., NW, Suite 650

Washington, DC 20006

Telephone: 202-540-7200

Facsimile: 202-540-7201

Interim Co- Lead Counsel for Plaintiffs

EXHIBIT 5

writer's direct e-mail:
rcoll@calvofisher.com

March 18, 2011

VIA ELECTRONIC MAIL and
U.S. POSTAL SERVICE

Luanne Sacks
Luanne.sacks@dlapiper.com
Carter W. Ott
carter.ott@dlapiper.com
DLA PIPER LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105

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

Dear Luanne and Carter:

This letter summarizes our conversation on Wednesday.

Stipulated Protective Order

The parties have reached an impasse on three points regarding the protective order:

1. Paragraphs 2.6, 7.3(c): SCEA wishes to add language to Paragraph 2.6 defining "expert" to exclude any employee, director, or officer of any of SCEA's "competitors." which would preclude Plaintiffs from showing any expert witness any Confidential or Highly Confidential documents if Plaintiffs' expert is an employee of a "competitor." Moreover, SCEA wishes to add language to Paragraph 7.3(c) requiring Plaintiffs to notify to SCEA in advance if Plaintiffs wish to show any "consultant" of any "competitor" such documents. During the meet and confer process, SCEA went even further to state that the term "competitor" should also include any independent contractor working for any company that manufactures or distributes video game consoles or peripherals, and any publishers or developers of video game software. Using this definition of "competitor," SCEA's proposed language would prohibit Plaintiffs from consulting with, for example, any person who is a consultant of an independent contractor of a company that distributes video

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game consoles. This is too vague, and the Court already rejected SCEA's request to insert similar provisions into the protective order. Accordingly, we do not agree.

2. Paragraph 3: Paragraph 3 of the Stipulated Protective Order excludes information in the public domain from the scope of the order's protection. SCEA wishes to insert the word "lawfully" into this paragraph to exclude from the scope of the order only information that is "lawfully" in the public domain. Such a modification to the Northern District's standard protective order is unworkable, as it is impossible to tell whether information in the public domain is there "lawfully" or not without engaging in a mini-trial regarding how the information in question reached the public domain. SCEA has raised the example of having its source code divulged in the "public domain," but Sony itself tweeted the source code to the public through a Twitter application. Even if such a "tweet" was done in error, the information remains in the public domain, and cannot be said to have been tweeted "unlawfully," at least without briefing, a deposition of the Sony officer who tweeted the information, discovery into why the Sony officer tweeted the information, and full briefing on the impact of mistakenly tweeting the information. To engage in this level of litigation over every piece of information in the public domain would substantially increase the discovery disputes in this case and is not realistic. That said, if SCEA believes that information has been used in a filing in this case that should be placed under seal, it is within its rights to make a motion for such relief. If the information is already in the public domain, it defies logic to claim SCEA would be prejudiced by having it appear on Pacer for a short period while SCEA makes an appropriate motion.
3. Paragraph 5.2: Paragraph 5.2 provides for designation of deposition excerpts as confidential. There is a sentence in this paragraph which states that an entire transcript can be designated as confidential. Although the Northern District's Form Protective Order for Litigation Involving Patents/Highly Confidential Material includes this provision, the Court rejected SCEA's contention that this was the model to follow. As such, Plaintiffs followed the standard protective order with an insert regarding "ATTORNEYS' EYES ONLY" designations. Moreover, it is difficult to imagine a scenario in this case where it would be appropriate to designate an *entire* transcript as confidential, at least not beyond the 21 day designation period. Therefore, we intend to raise this issue with the Court and request that the following sentence be excluded from the protective order: "Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –ATTORNEYS' EYES ONLY."

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A new version of the stipulated protective order, incorporating the items we have reached agreement upon, and with the foregoing issues remaining as Plaintiffs propose, is attached hereto as Attachment 1. Please provide a redlined version of it with your proposals relating to the three points above so that we can submit both versions to the Court.

PS3 Copying Protocol and Plaintiff Depositions

1. On March 15, 2011, you provided a proposed protocol regarding the copying of Plaintiffs' PS3s and Plaintiffs' depositions. We have generally agreed to your protocol with the following caveats:
 - a. The timeline suggested by SCEA for copying the PS3s is not possible because any copying of the PS3 must be subject to an appropriate protective order, per the Court's ruling. Additionally, scheduling will be based on witness and attorney availability as we seek to work in good faith and cooperatively.
 - b. SCEA should be responsible for promptly repairing, if possible, any damage done to the PS3s during the transportation or copying process, and may not seek to gain any litigation advantage arising from any damage done during such process. If the unit cannot be repaired, SCEA should replace the unit. SCEA agreed to provide a response to this proposal, which we are awaiting.
 - c. Counsel for Plaintiffs or their designated expert or representative will be present during the copying of the PS3s and will be permitted to videotape the process.
 - d. The family photos on Mr. Stovell's PS3 must not be included in any copy of his hard drive. SCEA has agreed to provide a proposal for how this "carve out" could be accomplished, which we are awaiting.
 - e. The Court's order regarding production of the Plaintiffs' PS3s impacted the privacy of the class representatives. Mr. Herz has elected to withdraw as a class representative. SCEA is nevertheless insisting on receiving and imaging Mr. Herz's PS3. Plaintiffs will request that the Court order that Mr. Herz need not produce his PS3 given his withdrawal as class representative, due to the fact that applying the balancing test for privacy concerns no longer should weigh in favor of production of his unit. In addition, Mr. Herz should not be deposed for the reasons previously raised and ruled upon by this Court with respect to prior named class representatives.

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- f. The copying of Mr. Huber's PS3 and Mr. Huber's deposition should take place near his home in Knoxville, TN. Doing so will minimize the chance of damage to Mr. Huber's PS3, which SCEA contends is important evidence in this case. SCEA should bear the cost of its own expert, including traveling to Tennessee for copying the PS3.
 - g. Mr. Baker's PS3 is not currently functioning. Although Plaintiffs remain concerned that shipping the PS3 could cause additional unrelated damage, in the interest of compromise Plaintiffs are willing to allow the PS3 to be copied in San Francisco. In addition, though not required to do so, Plaintiffs will agree to have Mr. Baker's deposition take place in San Francisco.
 - h. Plaintiffs have indicated that Mr. Baker wishes to repair his PS3 and has requested that SCEA state how it would like Mr. Baker to proceed with such repairs in order to ensure that the materials SCEA's seeks to image are not modified. SCEA has indicated it will provide a response, which we are awaiting.
2. You have indicated that you now intend to ask the class representatives to perform "demonstrations" at their depositions with their PS3s, including demonstrating what information is stored in their PS3s, where it was stored, and how they accessed such information in the units. Such a line of inquiry is irrelevant and Plaintiffs object to it as not likely to lead to the discovery of admissible evidence, and as being cumulative and burdensome. Moreover, this request is directly contrary to your representations to the Court regarding your intent to perform a "visual inspection" only and "turn it on and see if it works." Plaintiffs believe that these representations are what led Magistrate Judge Chen to approve SCEA's request and Plaintiffs intend to ask the Court to order that such a line of inquiry is inappropriate given SCEA's earlier representations.

Deposition of Third Party Witness Geoffrey Levand

You have accepted service on behalf of Geoffrey Levand of a deposition subpoena. DLA Piper is representing Mr. Levand for purposes of the deposition. During our call, you stated that you would not allow Mr. Levand to appear for his deposition on the noticed date of March 31, 2011 because Plaintiffs' depositions have not yet taken place. This position is inappropriate, as there is no "deposition priority" under the federal rules. Moreover, the reasons the Plaintiffs' depositions have not taken place relate to SCEA's unreasonable conduct and refusal to agree to an appropriate protective order, a delay which precludes Plaintiffs' PS3s from being copied, and accordingly the depositions from proceeding.

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You later indicated that the document requests in the notice to Mr. Levand, a third party, were too burdensome to comply with by March 31, 2011 and you would be serving objections. The document requests as a matter of law seek only those documents in Mr. Levand's possession, custody or control (at home or at work). It is difficult to believe that Mr. Levand's own computer systems, email accounts and hard files could not be searched over a two week period. Therefore, the notice provided in the subpoena to Mr. Levand was reasonable notice.

Nevertheless, we requested that you simply indicate when Mr. Levand will have had time to gather the requested documents and appear for his deposition. You refused to provide a response, claiming the information regarding when Mr. Levand could be ready to appear was "work product."

Accordingly, we intend to file a motion to compel. However, we will wait until after the noticed date of the deposition passes so that we can meet and confer and include in our letter to the Court any disputes relating to any objections Mr. Levand raises to our document requests.

Keywords/Custodians

On March 14, 2011, we provided you with additional proposed keywords and custodians whose records should be searched. You responded that SCEA would provide a response, which we are awaiting. As noted on our proposed lists, providing these lists is without prejudice to seek additional searches using other keywords and/or demanding additional custodians' files to be searched. In addition, as Plaintiffs have repeatedly requested (*e.g.*, see E-mail, James Pizzirusso to Carter Ott, February 25, 2011 ("It would also be helpful to have more information from you about the custodians, their positions, work areas, etc. that you promised to provide.")), please describe in writing how SCEA arrived at the conclusion that it only needs to search the files and records of eight custodians, and why SCEA believes that list of custodians and keywords (to the extent you dispute Plaintiffs' proposed key words) is sufficient.

SCEI Discovery

Per our discussion, we propose that Plaintiffs engage in the following discovery relating to SCEI discovery addressed in Magistrate Judge Chen's most recent order:

- a. No more than 10 interrogatories in addition to the other interrogatories already permitted by law or court order;

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- b. No more than 3 document requests;
- c. A rule 30(b)(6) deposition of SCEA on the topics addressed in the attached proposed notice; this Rule 30(b)(6) deposition notice would be in addition to the Rule 30(b)(6) deposition notice that we intend to serve on SCEA regarding other topics. A proposed limited Rule 30(b)(6) notice on SCEI topics is attached hereto as Attachment 2.

Document Production Protocol

We attempted to meet and confer with you regarding the method of production of documents. We indicated that we would like to receive documents in native format.¹

You refused to agree to produce the documents in native format, first claiming that SCEA had already started preparing its production in “searchable TIFF format” with metadata, but later admitting that no downloading process has yet begun. Though Plaintiffs maintain that producing in native format is the most cost effective way to proceed, and though Mr. Ott admitted that he “had done it both ways, in native and in TIFF,” and though we can provide examples of litigation wherein native format is used, in the interests of compromise we are willing to accept searchable TIFFs for most documents in the format set forth in the attached protocol (Attachment 3), under the conditions set forth in such protocol, including but not limited to the provisions regarding metadata. We still demand that all excel files must be produced in native format, and that we may request native format of particularized documents in the event it becomes appropriate (*e.g.*, they are unusable in TIFF format). These details are included in the protocol. In the event you believe that it is too costly to provide metadata with TIFFs, it is our position that native format should be used, which will decrease your costs and automatically provide the metadata we seek.

Magistrate Judge Chen has ordered that SCEA should be producing documents, and your refusal to find time to come to an agreement regarding document production format is contrary to that order.

¹ Per your request for examples of cases where Courts have ordered production in native format, please see *Nova Measuring Instruments Ltd. v. Nanometrics, Inc.*, 417 F. Supp. 2d 1121, 1122 (N.D. Cal. 2006) (requiring defendant to produce documents in their native file format with original metadata); *Hagenbuch v. 3B6 Sistemi Elettronici Industriali S.R.L.* 2006 WL 665005 *3 (N.D. Ill. Mar. 8, 2006) (ordering production in native format and commenting that TIFF files “do not contain all of the relevant, nonprivileged information contained in the designated electronic media,” including metadata); *Nat'l Day Laborer Org. Network v. U.S. Immigration & Customs Enforcement Agency*, 2011 WL 381625, at *2 (S.D.N.Y. Feb. 7, 2011) (ordering that all spreadsheets be reproduced in their native format).

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We believe we are at impasse on each of the foregoing issues in dispute, and we are prepared to proceed to Magistrate Judge Chen. Please provide a response to this letter within five days.

Very truly yours,

CALVO FISHER & JACOB, LLP

/s/ Rebecca M. Coll

Rebecca M. Coll

RMC:mkh

Attachment(s)
cc: All Counsel

1
2
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5
6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10
11 In re SONY PS3 "Other OS"
12 LITIGATION

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

13 **STIPULATED PROTECTIVE ORDER**
14

15
16 1. PURPOSES AND LIMITATIONS

17 Disclosure and discovery activity in this action are likely to involve production of
18 confidential, proprietary, or private information for which special protection from public
19 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
20 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
21 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
22 protections on all disclosures or responses to discovery and that the protection it affords from
23 public disclosure and use extends only to the limited information or items that are entitled to
24 confidential treatment under the applicable legal principles. The parties further acknowledge, as
25 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
26 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
27 followed and the standards that will be applied when a party seeks permission from the Court to
28

1 file material under seal.

2 2. DEFINITIONS

3 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
6 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
7 Rule of Civil Procedure 26(c).

8 2.3 Counsel (without qualifier): Outside Counsel of Record and House
9 Counsel (as well as their support staff).

10 2.4 Designating Party: a Party or Non-Party that designates information or
11 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
12 ““HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.””

13 2.5 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner in which it is generated, stored, or maintained (including, among other
15 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
16 or responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
19 witness or as a consultant in this action.

20 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
21 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of
22 which to another Party or Non-Party would create a substantial risk of serious harm that could not
23 be avoided by less restrictive means.

24 2.8 House Counsel: attorneys who are employees of a party to this action.
25 House Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

28 2.10 Outside Counsel of Record: attorneys who are not employees of a party to

1 this action but are retained to represent or advise a party to this action and have appeared in this
2 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
3 that party.

4 2.11 Party: any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their support
6 staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this action.

9 2.13 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
11 organizing, storing, or retrieving data in any form or medium) and their employees and
12 subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is designated
14 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected
19 Material (as defined above), but also (1) any information copied or extracted from Protected
20 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
21 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
22 Material. However, the protections conferred by this Stipulation and Order do not cover the
23 following information: (a) any information that is in the public domain at the time of disclosure to
24 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
25 as a result of publication not involving a violation of this Order, including becoming part of the
26 public record through trial or otherwise; and (b) any information known to the Receiving Party
27 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
28 obtained the information lawfully and under no obligation of confidentiality to the Designating

1 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations
4 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing
5 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
6 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
7 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
8 reviews of this action, including the time limits for filing any motions or applications for
9 extension of time pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 Party or Non-Party that designates information or items for protection under this Order must take
13 care to limit any such designation to specific material that qualifies under the appropriate
14 standards. The Designating Party must designate for protection only those parts of material,
15 documents, items, or oral or written communications that qualify – so that other portions of the
16 material, documents, items, or communications for which protection is not warranted are not
17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that
19 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
20 unnecessarily encumber or retard the case development process or to impose unnecessary
21 expenses and burdens on other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection or do not qualify for the level of protection
24 initially asserted, that Designating Party must promptly notify all other parties that it is
25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
27 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
28 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so

1 designated before the material is disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
5 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
7 material on a page qualifies for protection, the Producing Party also must clearly identify the
8 protected portion(s) (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has indicated
11 which material it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
14 inspecting Party has identified the documents it wants copied and produced, the Producing Party
15 must determine which documents, or portions thereof, qualify for protection under this Order.
16 Then, before producing the specified documents, the Producing Party must affix the appropriate
17 legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”)
18 to each page that contains Protected Material. If only a portion or portions of the material on a
19 page qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings,
22 that the Designating Party identify on the record, before the close of the deposition, hearing, or
23 other proceeding, all protected testimony and specify the level of protection being asserted.
24 When it is impractical to identify separately each portion of testimony that is entitled to protection
25 and it appears that substantial portions of the testimony may qualify for protection, the
26 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
27 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
28 which protection is sought and to specify the level of protection being asserted. Only those

1 portions of the testimony that are appropriately designated for protection within the 21 days shall
2 be covered by the provisions of this Stipulated Protective Order.

3 Parties shall give the other parties notice if they reasonably expect a deposition,
4 hearing or other proceeding to include Protected Material so that the other parties can ensure that
5 only authorized individuals who have signed the “Acknowledgment and Agreement to Be
6 Bound”) (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
7 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Transcripts containing Protected Material shall have an obvious legend on the title
10 page that the transcript contains Protected Material, and the title page shall be followed by a list
11 of all pages (including line numbers as appropriate) that have been designated as Protected
12 Material and the level of protection being asserted by the Designating Party. The Designating
13 Party shall inform the court reporter of these requirements. Any transcript that is prepared before
14 the expiration of a 21-day period for designation shall be treated during that period as if it had
15 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety
16 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
17 actually designated.

18 (c) for information produced in some form other than documentary and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
20 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
21 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions
22 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
23 identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
25 to designate qualified information or items does not, standing alone, waive the Designating
26 Party’s right to secure protection under this Order for such material. Upon timely correction of a
27 designation, the Receiving Party must make reasonable efforts to assure that the material is
28 treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
5 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
6 right to challenge a confidentiality designation by electing not to mount a challenge promptly
7 after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process by providing written notice of each designation it is challenging and describing
10 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
11 written notice must recite that the challenge to confidentiality is being made in accordance with
12 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
13 challenge in good faith and must begin the process by conferring directly (in voice to voice
14 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
15 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
16 confidentiality designation was not proper and must give the Designating Party an opportunity to
17 review the designated material, to reconsider the circumstances, and, if no change in designation
18 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
19 the next stage of the challenge process only if it has engaged in this meet and confer process first
20 or establishes that the Designating Party is unwilling to participate in the meet and confer process
21 in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
24 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
25 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
26 process will not resolve their dispute, whichever is earlier. Each such motion must be
27 accompanied by a competent declaration affirming that the movant has complied with the meet
28 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to

1 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
2 shall automatically waive the confidentiality designation for each challenged designation. In
3 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
4 time if there is good cause for doing so, including a challenge to the designation of a deposition
5 transcript or any portions thereof. Any motion brought pursuant to this provision must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
10 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
11 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing
12 to file a motion to retain confidentiality as described above, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing Party's
14 designation until the court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case only for
18 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
19 disclosed only to the categories of persons and under the conditions described in this Order.
20 When the litigation has been terminated, a Receiving Party must comply with the provisions of
21 Section 13 below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons authorized under
24 this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
26 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
27 disclose any information or item designated "CONFIDENTIAL" only to:

- 28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
2 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (that is attached hereto as Exhibit A);

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (c) experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
9 and Agreement to Be Bound” (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, mock
12 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
13 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
16 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
17 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
18 separately bound by the court reporter and may not be disclosed to anyone except as permitted
19 under this Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by
24 the Designating Party, a Receiving Party may disclose any information or item designated
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
28 information for this litigation and who have signed the “Acknowledgment and Agreement to Be

1 Bound” (Exhibit A);

2 (b) the Receiving Party’s House Counsel and their staff to whom it is
3 reasonably necessary to disclose the information for this litigation and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (c) the court and its personnel;

6 (d) court reporters and their staff, professional jury or trial consultants, mock
7 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
8 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

9 (e) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
15 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Protective Order. Such notification shall include a copy of this Stipulated
21 Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - before a determination by the court from
27 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
28 permission. The Designating Party shall bear the burden and expense of seeking protection in

1 that court of its confidential material – and nothing in these provisions should be construed as
2 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
3 another court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
5 IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-
7 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
9 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
10 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
13 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
14 Party shall:

15 1. promptly notify in writing the Requesting Party and the Non-Party
16 that some or all of the information requested is subject to a confidentiality agreement with a Non-
17 Party;

18 2. promptly provide the Non-Party with a copy of the Stipulated
19 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
20 description of the information requested; and

21 3. make the information requested available for inspection by the
22 Non-Party.

23 (c) If the Non-Party fails to object or seek a protective order from this Court
24 within 14 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party’s confidential information responsive to the discovery request. If the
26 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
27 in its possession or control that is subject to the confidentiality agreement with the Non-Party
28 before a determination by the Court. Absent a court order to the contrary, the Non-Party shall

1 bear the burden and expense of seeking protection in this Court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this Stipulated
5 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
6 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
7 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
8 made of all the terms of this Order, and (d) request such person or persons to execute the
9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection, the
14 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
15 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
16 an e-discovery order that provides for production without prior privilege review. Pursuant to
17 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
18 disclosure of a communication or information covered by the attorney-client privilege or work
19 product protection, the parties may incorporate their agreement in the stipulated protective order
20 submitted to the Court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to disclosing or
26 producing any information or item on any ground not addressed in this Stipulated Protective
27 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
28 the material covered by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the Designating
2 Party or a court order secured after appropriate notice to all interested persons, a Party may not
3 file in the public record in this action any Protected Material. A Party that seeks to file under seal
4 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
5 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
6 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
7 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
8 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
9 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the
10 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
11 79-5(e) unless otherwise instructed by the Court.

12 13. FINAL DISPOSITION. Within 60 days after the final disposition of this
13 action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the
14 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
15 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
16 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
17 the Receiving Party must submit a written certification to the Producing Party (and, if not the
18 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
19 category, where appropriate) all the Protected Material that was returned or destroyed and
20 (2)affirms that the Receiving Party has not retained any copies, abstracts, compilations,
21 summaries or any other format reproducing or capturing any of the Protected Material.
22 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
23 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain Protected Material. Any such archival copies that
26 contain or constitute Protected Material remain subject to this Protective Order as set forth in
27 Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: _____

FINKELSTEIN THOMPSON LLP

4 By: /s/

5 Rosemary M. Rivas

6 *Other OS Plaintiffs' Interim Co-Lead Counsel*

7 Dated: _____

CALVO FISHER & JACOB LLP

8
9 By: /s/

10 James A. Quadra

11 *Other OS Plaintiffs' Interim Co-Lead Counsel*

12 Dated: _____

HAUSFELD LLP

13 By: /s/

14 James Pizzirusso (*Pro hac vice*)

15 *Other OS Plaintiffs' Interim Co-Lead Counsel*

16 Dated: _____

DLA PIPER LLP (US)

17
18 By: /s/

19 Luanne Sacks

20 *Counsel for defendant Sony Computer
Entertainment America LLC*

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22
23 Dated:

24 By: _____

25 Honorable Edward M. Chen

26 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of _____ [insert
formal name of the case and the number and initials assigned to it by the court]. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I understand and

1 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
2 of contempt. I solemnly promise that I will not disclose in any manner any information or item
3 that is subject to this Stipulated Protective Order to any person or entity except in strict
4 compliance with the provisions of this Order.

5 I further agree to submit to the jurisdiction of the United States District Court for
6 the Northern District of California for the purpose of enforcing the terms of this Stipulated
7 Protective Order, even if such enforcement proceedings occur after termination of this action.

8 I hereby appoint _____ [print or type full name] of
9 _____ [print or type full address and telephone
10 number] as my California agent for service of process in connection with this action or any
11 proceedings related to enforcement of this Stipulated Protective Order.

12
13 Date: _____

14 City and State where sworn and signed: _____

15 Printed name: _____

16 [printed name]

17 Signature: _____

18 [signature]
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2 Rebecca M. Coll (SBN 184468)

Email: rcoll@calvofisher.com

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10 *Interim Co-Lead Counsel and Counsel for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 IN RE SONY PS3 "OTHER OS"
15 LITIGATION

CASE NO. CV-10-1811-RS

CLASS ACTION

16
17 **PLAINTIFFS' [PROPOSED]**
18 **ADDITIONAL NOTICE OF TAKING OF**
19 **DEPOSITION OF DEFENDANT SONY**
20 **COMPUTER ENTERTAINMENT**
21 **AMERICA, LLC, RELATED TO COURT**
22 **ORDER (DKT. 152)**

[Amended Complaint Filed: March 9, 2011]

23 Date: April 11, 2011

24 Time: 10:00 A.M.

25 Place: CALVO FISHER & JACOB LLP

One Lombard Street

San Francisco, California 94111

26 Telephone: (415) 374-8370

27 Trial Date: None

28 CV-10-1811-RS

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(6),
3 Plaintiffs Anthony Ventura, Jonathan Huber, Jason Baker, and Elton Stovell ("Plaintiffs") will
4 take the deposition of Defendant Sony Computer Entertainment America, Inc. ("SCEA" or
5 "Defendant"). The deposition will commence on April 11, 2011 at 10:00 a.m. at the offices of
6 CALVO FISHER & JACOB LLP, One Lombard Street, San Francisco, California 94111, (415)
7 374-8370.

8 The deposition will be taken before a notary public or other person authorized to
9 administer oaths under applicable law, and will be conducted pursuant to Federal Rule of Civil
10 Procedure 30. Pursuant to Rule 30(b)(2) and 30(b)(3), Plaintiffs reserve the right to record the
11 deposition testimony by videotape and instant visual display in addition to recording the testimony
12 stenographically. Plaintiffs reserve the right to use the videotape deposition at the time of trial.

13 Defendant is advised that Rule 30(b)(6) requires it to produce one or more witnesses at the
14 stated location and time who are aware of and prepared to testify about the Defendant's
15 knowledge, and not just information personally known by them, of the topics referred to in the
16 Schedule of Deposition Topics attached hereto as Exhibit A. If the designated representative or
17 representatives do not have such knowledge, they are required to acquire it through whatever
18 reasonable investigation may be necessary.

19
20 Dated: March 18, 2011

CALVO FISHER & JACOB LLP

21 /s/ James A. Quadra

22 James A. Quadra

23 Rebecca Coll
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25 San Francisco, California 94111
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Rosemary M. Rivas

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/s/ James Pizzirusso
James Pizzirusso (*Pro hac vice*)

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Interim Co-Lead Counsel for Plaintiffs

1 EXHIBIT A

2
3 DEFINITIONS

4 The following definitions apply to these Topics:

5 1. "PS3" shall mean the Sony Playstation 3 video game console.

6 2. "OTHER OS" shall mean the Other OS feature(s) on the PS3 which enable the PS3
7 users to install any operating system other than that pre-installed by SCEA (such as Linux) and
8 enabled the PS3 to operate in a manner similar to a personal computer.

9 3. "SCEA," "YOU," "YOUR" or "DEFENDANT" mean Defendant SONY
10 COMPUTER ENTERTAINMENT AMERICA, LLC, and each of its, employees, agents,
11 representatives, attorneys or any person(s) acting or purporting to act on its behalf.

12 4. "SCEI" means Sony Computer Entertainment, Inc., and each of its, employees,
13 agents, representatives, attorneys or any person(s) acting or purporting to act on its behalf.

14 5. "UPDATE 3.21" means firmware update 3.21 issued by SCEA for the PS3 on or
15 around April 1, 2010.

16
17 SCHEDULE OF DEPOSITION TOPICS

18 1. The marketing, sale, promotion, warranting and/or servicing of PS3 products in the
19 United States as directed by, as controlled by, as an agent of, and/or on behalf of SCEI.

20 2. The ability to and past instances where SCEA obtained or accessed documents
21 from SCEI for its own business needs related to the PS3.

22 3. The ability to and past instances where SCEA obtained or accessed documents
23 from SCEI on demand related to the PS3.

24 4. Whether SCEI has ever refused access to or production of documents to SCEA
25 related to the PS3 and, if so, under what circumstances.

26 5. The sharing of documents, databases, and/or other communications between SCEA
27 and SCEI related to the PS3.

1 6. The degree of ownership and control exercised by SCEI over SCEA related to the
2 PS3 and who has ultimate decision-making authority.

3 7. Any other legal proceeding in which SCEA has been ordered to or voluntarily
4 produced documents from SCEI.

5 8. SCEA's involvement with and how it was informed of the decisions to include the
6 "Other OS" feature on the PS3, promote the "Other OS" feature on the PS3, and/or remove the
7 "Other OS" feature PS3.

8 9. SCEA's involvement with and how it was informed of the decision to offer
9 firmware Update 3.21.

10 10. SCEA's involvement with and how it was informed of the purported reasons or
11 justifications for removing the "Other OS" feature through firmware Update 3.21.

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EXHIBIT 6

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Interim Co-Lead Counsel and Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

16 IN RE SONY PS3 "OTHER OS"
17 LITIGATION

CASE NO. CV-10-1811-RS (EMC)

**[PROPOSED] ORDER REGARDING
DOCUMENT PRODUCTION
PROTOCOL**

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23 1. **Applicability.** This document production protocol shall apply to the production of
24 documents existing in hard-copy form or in electronic form in this action by Defendant Sony
25 Computer Entertainment America, LLC or any affiliated entity, including but not limited to Sony
26 Computer Entertainment International ("Defendant Entities"). This Order shall apply to this
27 matter and to all related actions that will be originally filed in, transferred to, or removed to this
28 Court and consolidated with this matter.

1 2. **General Format of Production.** All documents that originally existed in either
2 hard-copy or native electronic form that are produced in these proceedings shall be produced in
3 electronic image form in the manner provided herein, and shall carry Bates stamp numbers and,
4 where appropriate, confidentiality designations, in a manner that does not obscure any writing or
5 image on the original document. Each document's electronic image shall convey the same
6 information and image as the original document. Documents that present imaging or formatting
7 problems shall be promptly identified and the parties shall meet and confer to attempt to resolve
8 the problems. Notwithstanding the foregoing, by mutual agreement in a writing signed by the
9 parties, the parties may agree to modify the production format without approval by the Court.

10 3. **Production Media.** The Defendant Entities shall produce documents on CD-
11 ROM, DVD, external hard drive (with standard PC compatible interface), or such other readily
12 accessible computer or electronic media as the parties may hereafter agree upon (the "Production
13 Media"). Each piece of Production Media shall identify a production number corresponding to the
14 production "wave" the documents on the Production Media are associated with (e.g., "SCEA001";
15 "SCEA002"), as well as the volume of the material in that production wave (e.g., "-001"; "-002").
16 For example, if the first production wave by the Defendant Entities comprises document images
17 on three hard drives, the Defendant Entities shall label each hard drive in the following manner:
18 "SCEA001-001"; "SCEA001-002"; "SCEA001-003." Additional information that shall be
19 identified on the physical Production Media shall include: (1) text referencing that it was produced
20 in this matter, (2) the production date, and (3) the Bates Number range(s) of the materials
21 contained on the Production Media.

22 4. **Cooperation.** The parties shall meet and confer and cooperate to facilitate the
23 import and use of the produced materials with commercially available document management or
24 litigation support software. All requests to meet and confer pursuant to this order shall conclude
25 within fourteen days of the requesting party's initial request.

26 5. **Production Format Of Electronically Stored Information.** Except as set forth
27 herein or by subsequent agreement or order, all electronically stored documents shall be produced
28 in Tagged Image File format ("TIFF"), single page, Group IV TIFF, black and white at 300 x 300

1 dpi resolution. If a color image is produced in black and white, the receiving party may request
2 the producing party to produce the original, color image. After receiving such a request for color
3 production, the parties will meet and confer on a reasonable and cost-effective means of providing
4 the requested documents. The production format shall conform to the following requirements:

5 a. The image file names shall match the Bates number assigned to the image
6 (for example: SCEA0000001.TIF).

7 b. Documents shall carry Bates numbers and confidentiality designations as set
8 forth in Paragraph 2, above.

9 c. Load files: The Defendant Entities shall produce documents, data and
10 information either on hard drives, DVDs or CDs, depending on the size of the production, in the
11 following folders:

12 i. Images folder - Single-page TIFF - Group IV Black & White

13 ii. OPT folder - Pathing to the single-page TIFFs

14 iii. DAT folder

- Metadata fields set forth below
- Relative pathing to OCR
- Relative pathing to natives (if producing any natives)

16 iv. OCR folder

- Extracted text/OCR - document level text files – ANSI format
- Relative pathing to text files in DAT
(example: \OCR\001\INV00001.txt)
- The extracted text/OCR shall be Unicode compliant in foreign
19 language documents.

20 d. The metadata fields to be provided in the DAT folder shall be as follows:

- | | | |
|------------------|----------------|-------------------|
| 21 • BEGBates | • CC | • MODIFIEDDATE |
| 22 • ENDBates | • BCC | • MODIFIEDTIME |
| 23 • BEGATTACH | • DATESENT | • HASHVALUE |
| 24 • ENDATTACH | • TIMESENT | • CUSTODIAN |
| 25 • ATTACHRANGE | • DATERECEIVED | • CONVERSATION ID |
| 26 • ATTCOUNT | • TIMERECEIVED | • PARENT ID |

- PAGECOUNT • FILENAME • CHILD ID
- FILETYPE • FILEEXT • DUP ID
- EMAILSUBJECT • AUTHOR • TIME ZONE – time data was processing in
- TO • CREATEDATE • OCR PATH –
(Example of relative pathing:.\OCR\001\INV00001.txt)
- FROM • CREATETIME • NATIVE LINK -
(Example of relative pathing:.\NATIVES\001\INV00001.xls)

e. If the Defendant Entities have data that was created with proprietary software and/or MDB database files, this data shall be produced in Single Page Tiff format or in such other mutually agreeable format that will allow the receiving party to render the data for review.

f. Any party producing electronic information shall disclose any restrictions as to scope and method which may affect their ability to conduct a complete electronic search of the electronically stored information. The parties shall meet and confer in good faith to reach agreements as to the method of searching, and the terms and phrases to be searched. The parties shall also meet and confer regarding the timing and conditions of any additional searches which may become necessary in the normal course of discovery.

g. All excel and other spreadsheets prepared with similar software shall be produced in native format. In addition, the parties shall meet and confer regarding any other documents produced in TIFF which the receiving party requests to receive in native format.

6. **Production Format Of Hard Copy Documents.**

a. All hard copy documents shall be produced as single-page “TIFFs,” shall be scanned at industry standard resolution and shall reflect, without visual degradation, the full and complete information contained on the original document.

b. All TIFF images shall be produced with associated OCR text and DAT and OPT load files. The DAT load file shall contain the Objective Coding Fields referenced below. The OPT load file will contain pathing to the Single Page TIFF images.

c. Each page image file shall be named with the unique Bates Number of

1 the page of the document in the case of single-page TIFFs, followed by the extension “.TIF.” In
2 the event the Bates Number contains a symbol and/or character that cannot be included in a file
3 name, the symbol and/or character will be omitted from the file name.

4 d. In scanning paper documents, distinct documents shall not be merged into
5 a single record, and single documents shall not be split into multiple records (i.e., paper documents
6 should be logically unitized).

7 e. Parent-child relationships (the association between an attachment and its
8 parent document) shall be preserved.

9 f. At least the following objective coding fields should be provided for
10 all hard copy documents:

- 11 i. Beginning Bates Number
- 12 ii. Ending Bates Number
- 13 iii. Beginning Attachment Number
- 14 iv. Ending Attachment Number
- 15 v. Source and Custodian Information
- 16 vi. Redacted
- 17 vii. OCR. Document Level Txt files, with relative pathing to the txt
18 files in the DAT. Example of relative pathing:

19 .\OCR\001\INV00001.txt

20 g. Where a single document custodian has more than one identical hard copy
21 of a document (i.e., the documents are visually the same in every respect),
22 the Defendant Entities need only produce a single copy of that document.
23 Where multiple document custodians each possess their own copies of an
24 identical document, the document shall be produced once for each custodian
25 in possession of the document. De- duplicated originals shall be securely
26 retained and made available for inspection and copying.

27 **IT IS SO ORDERED.**

28 Dated: _____

EDWARD M. CHEN

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