ATTACHMENT C

From: Ott, Carter
Sent: Friday, April 01, 2011 2:24 PM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph
Subject: RE: Other OS - Discovery Issues

Rebecca,
Your attached letter does not reflect our most recent meet and confer efforts, specifically, what we discussed in our recent correspondence. We will not provide you with our position today, particularly as that response would require substantial clarification of your misstatements regarding our meet and confer. If you plan to revise your letter to accurately reflect our meet and confer, please email it to us so that we can review it; otherwise, we will provide the court with our response within four business days of your filing, as we previously offered. I trust that you will communicate our intended timing for our response to the court rather than imply that we have simply declined to respond.

Thank you,
Carter

DLA PIPER

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From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Thursday, March 31, 2011 8:00 PM
To: Ott, Carter
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph
Subject: RE: Other OS - Discovery Issues

Carter-

Your delays are unacceptable. Our position now is identical to the position set forth during our lengthy meet and confer conference on March 16 and in our letter dated March 18. We agreed to certain compromises at that time as a result of the meet and confer process, and our position has not changed since that time.

So much time has passed since we started meeting and conferring on these issues that the Court has contacted us to ask when it can expect the protective order to be submitted. We cannot wait any longer to address these important issues. We are going to submit a letter to Magistrate

Judge Chen tomorrow. If you will agree to provide your position for a joint letter by 3 p.m. tomorrow, we will include it. If you will not, we will let the Court know you refused.

A copy of the letter we plan to submit to the Court is attached hereto. It is obviously unfair for you to see our side's position first, especially since we do not even know what your position is on half the issues we discussed on March 14 because you apparently still have not received a response from your client on the issues. Nevertheless, in one last attempt to persuade SCEA to comply with the Court's instructions, we are providing our side of the letter to you now. Please be aware that we reserve the right to respond to any position you take or any argument you make, especially those that you failed to raise in good faith during the meet and confer process.

Thanks.

Becca Coll
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One Lombard Street
San Francisco, CA 94111
T: 415-374-8370

From: Ott, Carter [mailto:Carter.Ott@dlapiper.com]
Sent: Thursday, March 31, 2011 4:35 PM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph
Subject: Other OS - Discovery Issues

Rebecca,
Thank you but we cannot provide any proposed form of response until we receive your actual arguments. Our primary concern is that blind, potentially overbroad, submissions will be extremely inefficient for us and Judge Chen. We are willing to agree that, after you provide us with your statement, we will provide you with our response within four business days.

With regard to the Plaintiffs' depositions and PS3 imaging protocol, I'm not clear why we would need to submit this issue as we are substantially in agreement. Rather than submit this to Judge Chen with other matters in dispute, with the likelihood that he will assume based on its inclusion that that matter is also in dispute, why don't we simply put together a stipulation and proposed order for those matters we have agreed upon? My understanding is that the only issue that remains in dispute is the location for imaging Mr. Huber's PS3 and his deposition. As we understand your position, Mr. Huber will only produce his PS3 for imaging near his home in Knoxville, TN, in response to which we have proposed that he should incur half the costs related to Teris' travel for that imaging. You have further objected to producing him for deposition in San Francisco, the site of the lawsuit he filed, supposedly because of concerns regarding bringing his PS3 here. We would be willing to recommend the following compromise to SCEA -- that SCEA pay all of Teris' costs related to imaging Mr. Huber's PS3 in Knoxville, if Mr. Huber complies with the controlling Federal Rules of Civil Procedure, as well as Magistrate Judge Chen's order, and appear for his deposition in California and produce his PS3 at that deposition.

With regard to your request that SCEA repair Mr. Baker's nonfunctioning PS3, we have raised this issue with our client, but before we can provide a final recommendation regarding your request, need further information regarding the nature of the alleged failure that would include when it stopped functioning and under what circumstances, and when you say it doesn't function, what precisely do you mean, i.e., does it not even power up, or is it just that it won't recognize game or movie discs or some other type of failure?

With regard to Mr. Levand, we would be happy to meet and confer with you about his deposition and document production but proposing, in your email below, that we submit this matter to Judge Chen tomorrow is not possible nor consistent with the Court's meet and confer instructions. We are free to talk after 11:30 a.m. on Monday. Subject to resolving our disputes regarding the requested document production and assuming that our disputes regarding the terms of a protective order are resolved in the interim, we anticipate providing you early next week with possible dates for his deposition.

Finally, with regard to Mr. Herz, we would be willing to agree to defer the issue of discovery from him until after we have completed the depositions of the plaintiffs referenced in your amended complaint.

Thank you,
Carter

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From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Wednesday, March 30, 2011 5:45 PM
To: Ott, Carter
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph
Subject: RE: Other OS - Discovery Issues

Carter-

We intend to add a section to the letter to Magistrate Judge Chen regarding the deposition of Mr. Levand.

As you know, we sent you the Levand deposition notice on March 14, and we met and conferred with you regarding the deposition during our phone conference on March 16. We are available tomorrow or Friday to further meet and confer regarding your objections. Please let us know when you are free.

In the meantime, please provide a date or dates when Mr. Levand will be available for his deposition.

Thanks.

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From: Rebecca Coll
Sent: Wednesday, March 30, 2011 8:05 AM
To: 'Ott, Carter'
Cc: James Quadra; 'rrivas@finkelsteinthompson.com'; 'jpizzirusso@hausfeldllp.com'; 'Sacks, Luanne'; 'Collins, Joseph'
Subject: RE: Other OS - Discovery Issues

Carter-

I have attached hereto a template of a joint letter to Magistrate Judge Chen. Please confirm that SCEA will agree to submit a joint letter pursuant to Magistrate Judge Chen's instructions, and state whether SCEA will agree to exchange our respective parts of the letter by Friday, April 1, 2011.

Thanks.

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From: Rebecca Coll
Sent: Saturday, March 26, 2011 7:04 AM
To: 'Ott, Carter'
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph
Subject: RE: Other OS - Discovery Issues

Carter-

1. We do not agree with the statements in your email, and it appears that, on all issues raised in our letter, we have either reached impasse or SCEA has delayed resolution of our disputes for so long that we can no longer refrain from seeking assistance from the Court.

2. Your representations regarding our conversation with respect to Mr. Levand's deposition are false, including your statement that you raised the issue of the protective order in connection with Mr. Levand's deposition. That said, we will review your objections to our document requests in connection with the deposition and meet and confer with you.

3. Regarding the protective order, we will not provide the names of our consultants for the reasons previously stated. In addition, your suggestion regarding documents in the public domain is not acceptable for the reasons we have previously stated in response to similar suggestions from you. We have reached impasse on the protective order on those points, and you have delayed responding for so long on Paragraph 5.2 that we can no longer wait for a response, especially given your refusal to produce Mr. Levand for a deposition until a protective order is in place.

4. Regarding your questions about the named representatives and their PS3s:

a. As we have already told you, Mr. Herz was dropped from the Complaint as a named representative, as reflected in the Amended Complaint.

b. As we have already told you, we do not currently intend to present Mr. Huber's PS3 at trial, and we certainly do not want to risk it being damaged in the meantime by transporting it across the country in advance of trial.

c. We will lay out our agreed-upon terms for the protocol for copying the PS3s in our letter to Magistrate Judge Chen, and ask him to enter an appropriate order. If you would like to prepare a separate stipulation that would be fine.

5. Despite promises to do so, you have not provided a written response regarding why you believe your short list of custodians meets SCEA's discovery obligations.

We will provide the form of a joint letter to Magistrate Judge Chen early next week.

Thanks.

Becca Coll
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From: Ott, Carter [mailto:Carter.Ott@dlapiper.com]
Sent: Wednesday, March 23, 2011 8:36 PM
To: Rebecca Coll
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com; Sacks, Luanne; Collins, Joseph
Subject: Other OS - Discovery Issues

Rebecca,
We have reviewed your letter dated March 18, 2011, and generally do not agree with your representation with regard to many of the issues we covered during our March 16 teleconference. Also, as explained below, although we understand that you believe that "we are at [an] impasse" with regard to every open discovery issue and that you "are prepared to proceed to Magistrate Judge Chen" with regard to each and every one of them, we see no reason to move with regard to premature issues or others that we are close to agreeing upon simply as a matter of course.

Deposition Of Mr. Levand
Your representations of what we said with regard to Mr. Levand are incorrect. For example, we did not say that we would not produce Mr. Levand "because Plaintiffs' depositions have not yet taken place," that "the document requests in the notice to Mr. Levand" are "too burdensome to comply with by March 31, 2011," or that "information regarding when Mr. Levand could be ready to appear was 'work product.'" We informed you, as you informed us with regard to your clients' depositions, that Mr. Levand's deposition cannot proceed until a protective order is entered, and that we are generally concerned about the prospect of dropping everything to prepare and produce Mr. Levand for deposition when the **six** different depositions of the named plaintiffs in this action, which we noticed nearly **six** months ago, still have not taken place. But we did not say that we would not produce Mr. Levand until your clients' depositions were complete. Clearly, this is a point that we will need to discuss. We also merely mentioned that, after briefly reviewing the document requests, they appeared to be extremely burdensome; and we also would not, upon your request, disclose the content of communications we have had with Mr. Levand on the basis of the attorney-client privilege, not the work product doctrine.

I understand from your letter that you intend to file a motion to compel with regard to Mr. Levand's deposition and the documents you have demanded he produce. At no time in the past, including during our March 16 conversation, did you mention that you intend to do so. As you admit in your letter, during our March 16 conversation we told you that we would serve you with written objections to your subpoena and documents requests. I recommend that you wait to file your motion until *after* you receive our objections and we meet and confer. Otherwise, we will oppose that premature motion based on your failure to meet and confer, and seek sanctions.

Protective Order
To assist with moving forward with discovery, during the March 16 teleconference we offered that

we would agree to your proposed draft stipulated protective order, provided that you not disclose any documents or information designated as "Highly Confidential" to anyone outside of your firms, and that we would have the court resolve the remaining open issues while discovery proceeded. You would not agree to our proposed compromise.

While we are in agreement with regard to a significant portion of the protective order, I understand that the following issues remain open:

Paragraph 2.6 and 7.3(c)
We disagree with your characterization of our discussion as well as our proposed terms. In our March 16 discussion, we offered that we would agree to entry of the version of the protective order you have proposed provided that you not share any documents designated as "highly confidential" outside of your law firms while we attempt to resolve the remaining open issues. You would not agree to this, and you told us that we should prepare this for resolution by Judge Chen. Ultimately, you offered that the pre-notice/expert provision be revised so that it applies only to employees of Microsoft and Nintendo. We appreciate your willingness to compromise, but SCEA cannot limit the restriction to so few of its competitors. We suggest that you present us with the name of any consultant you engage who works for a potential competitor, and we will consider the issue.

Paragraph 3
Again, we disagree with your characterization of the need for this provision. However, I believe that our position is clear. The term "lawful" is necessary to halt further exposure of commercially sensitive information unlawfully placed in the public domain. From our March 16 meet and confer and your letter, we understand your position is partly based on the notion that documents in the public domain cannot be protected by the stipulated protective order. We are willing to drop the word "lawful" that we added regarding information in the public domain if you are willing to agree to include a provision in this section reserving our right to move to seal or designate documents or other information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on the grounds that the documents or information are not lawfully in the public domain,

Paragraph 5.2
This is an issue that we previously asked that you clarify, and you now have. In the past, you indicated that you objected to including the section of Paragraph 5.2 that affords deposition testimony protection for twenty-one days while the designating party identifies those parts that are entitled to protection. Now, we understand that you ask only that we delete the last sentence of Paragraph 5.2(b), which reads "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." I believe that this is something that we may be able to agree on, and we are currently conferring with our client about this.

Plaintiff Depositions and PS3 Imaging Protocol
I believe that we are substantially in agreement with regard to the protocol. I recommend that we put the terms into a writing so that we can finalize them.

With regard to Mr. Stovell's "family photos," we proposed during our March 16 teleconference that Mr. Stovell provide some description of those files (*i.e.,* the file name) and that we could have TERIS delete those files from the copy it will create. Mr. Pizzirusso said that he would talk with Mr. Stovell about this proposal.

I also understand that Mr. Herz is no longer acting as a class representative, and that he now refuses to participate in discovery. Are you planning on filing a formal motion to withdraw him? You also mentioned that he will participate in the action as a class member. Could you tell us which class he purports to be a member of?

I understand that you will only produce Mr. Huber for deposition and provide his PS3 for imaging near his home, located in Knoxville, TN. During our March 16 teleconference, you also said that you

will not bring Mr. Huber's PS3 into California for any reason, including trial, notwithstanding that you refer to this PS3 in your Amended Initial Disclosures. We also understand that you now would like SCEA to repair Mr. Baker's non-functioning PS3, although this is not a condition to his deposition. We are discussing these issues with our client.

Finally, I understand that you do not agree that we may use your clients' PS3s during their depositions to walk them through how they used those devices. We also disagree with your characterization of what we said during the hearing regarding how we would use the PS3s during their depositions. This baseless objection is clearly intended as a further attempt to delay your clients' depositions, and, if you move for a protective order on this issue, we will seek all available remedies in response to this obvious stalling tactic.

Keywords and Custodians

You have provided us with proposed keywords and a list of additional potential custodians, and we are reviewing them for further discussion. Also, as we previously discussed, the custodians we have identified are those individuals whom we believe would have emails responsive to your requests, to the extent they exist, based on the individuals' role and involvement at SCEA.

Document Production Format

I believe that you may be confused about our discussion regarding the "Document Production Protocol" as your recitation misstates many of the matters we discussed. For example, I never said that I have produced documents "in native and in TIFF." In fact, as we explained, we have never produced all documents in native format, as you requested, because of the substantial burden and risks that come with such a production. Instead, in the past, we have produced only in tiff and, on a document by document basis and based on specific requests, no more than a handful of documents in native.

During our March 16 discussion, you demanded that we produce all documents in native; we offered to produce documents in tiff searchable format and that we would meet and confer with you in the future about any documents you would like in native format. You declined this proposed compromise. However, I understand that you are now agreeable to a production in tiff searchable format, but that you wish to receive all Excel spreadsheets in native solely because the "formula" that appear in some spreadsheets are not viewable in tiff. We are conferring with our client about your request, although we should note that not all spreadsheets contain formula.

We are also in receipt of your proposed stipulation for a document production protocol. As an initial matter, because you allege your document production is complete, this is not a stipulation but a demand with regard to the format of only our production. We are reviewing your proposal and will provide you with our comments.

Discovery from SCEI

We are discussing your proposal with our client.

Thank you,
Carter

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From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Friday, March 18, 2011 8:26 PM
To: Sacks, Luanne; Ott, Carter
Cc: James Quadra; rrivas@finkelsteinthompson.com; jpizzirusso@hausfeldllp.com
Subject: Sony Other OS Discovery Issues

Please see the attached letter and attachments thereto.

Becca Coll
Calvo Fisher & Jacob, LLP
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The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please reply to the sender and destroy all copies of the message. To contact us directly, send to postmaster@dlapiper.com. Thank you.

From: Ott, Carter
Sent: Friday, March 11, 2011 8:11 AM
To: Rebecca Coll
Cc: James Quadra; jpizzirusso@hausfeldllp.com; rrivas@finkelsteinthompson.com; Sacks, Luanne
Subject: RE: Sony Other OS Protective Order

Rebecca,
Our comments are interlineated below.

1. Paragraphs 2.6, 7.3(c): Your changes preclude us from retaining experts who are employees of "competitors," and impose improper conditions on the use of experts who are consultants of "competitors." Magistrate Judge Chen did not order that such provisions should be included in the order. In addition, the term "competitors" is too vague. Please let us know which companies you would consider "competitors" for purposes of these provisions, and we will discuss inserting a provision regarding employees of those specific competitors. Such a provision would not apply to consultants of competitors.
To address your concerns, we are willing to add the following to Paragraph 2.6:

"Competitors" as used in this section includes any manufacturer or distributor of video game console hardware or peripherals, including but not limited to Microsoft and Nintendo, and publishers and developers of video game software, and includes independent contractors working for these entities.

And revise 7.3(c) to read as follows-

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A). A Receiving Party may not disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to an Expert who is a litigation consultant of a Competitor, without first providing prior notice to the Designating Party of the name of the Competitor(s) and the nature of the consultation, and sufficient time for it to seek a protective order barring such disclosure;

2. Paragraph 3: We will not agree to insert the word "lawfully," as it will only lead to further disputes about whether information is in the public domain "lawfully."
I do not believe that this will result in any disputes regarding what is or is not in the public domain lawfully because this provision only sets out the scope of the protective order. In addition, we believe that the motion to seal we filed last month demonstrates the need for this term, as some of the documents we may seek to seal are or may be in the public domain illegally. However, this is something we can discuss.

3. Paragraph 5.1: The insertion of the phrase "to the extent practical to do so" is not acceptable. It will only lead to overdesignations and disputes about what is "practical.
We will agree to delete this phrase.

4. Paragraph 5.2: We will not agree to a provision that allows you to designate entire transcripts as confidential. The remainder of the changes to this paragraph are acceptable, assuming we come to an agreement on the remainder of the protective order.
I believe that you may be confused. This provision does not give anyone the right to designate an entire transcript. Rather, it protects the entire transcript, when it is impracticable to identify each section that should be designated, to provide a party with 21-days in which to designate appropriately. This provision is also found in the District's sample form.

Thank you,
Carter

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Associate

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From: Rebecca Coll [mailto:rcoll@calvofisher.com]
Sent: Friday, February 25, 2011 3:55 PM
To: Ott, Carter; Sacks, Luanne
Cc: James Quadra; jpizzirusso@hausfeldllp.com; rrivas@finkelsteinthompson.com
Subject: Sony Other OS Protective Order

Carter

This responds to your proposed changes to the stipulated protective order. We will not agree to the following changes:

1. Paragraphs 2.6, 7.3(c): Your changes preclude us from retaining experts who are employees of "competitors," and impose improper conditions on the use of experts who are consultants of "competitors." Magistrate Judge Chen did not order that such provisions should be included in the order. In addition, the term "competitors" is too vague. Please let us know which companies you would consider "competitors" for purposes of these provisions, and we will discuss inserting a provision regarding employees of those specific competitors. Such a provision would not apply to consultants of competitors.

2. Paragraph 3: We will not agree to insert the word "lawfully," as it will only lead to further disputes about whether information is in the public domain "lawfully."

3. Paragraph 5.1: The insertion of the phrase "to the extent practical to do so" is not acceptable. It will only lead to overdesignations and disputes about what is "practical."

4. Paragraph 5.2: We will not agree to a provision that allows you to designate entire transcripts as confidential. The remainder of the changes to this paragraph are acceptable, assuming we come to an agreement on the remainder of the protective order.

Thank you.

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