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10 Attorneys for Defendant SONY COMPUTER  
 11 ENTERTAINMENT AMERICA LLC and Non-  
 12 Party SONY NETWORK ENTERTAINMENT  
 INTERNATIONAL LLC.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN FRANCISCO DIVISION

16 IN RE SONY PS3 OTHER OS  
 17 LITIGATION

Case No.: C 10-1811 RS

**ADMINISTRATIVE MOTION TO  
 CONSIDER WHETHER CASES SHOULD  
 BE RELATED**

(CIVIL LOCAL RULES 3-12 AND 7-11)

21 HENRY GARCIA, on behalf of himself,  
 22 all others similarly situated and the general  
 public,

Case No.: C 11-2246 RS

23 Plaintiff,

24 v.

25 SONY COMPUTER ENTERTAINMENT  
 26 AMERICA LLC and ACTIVISION  
 BLIZZARD, INC.,

27 Defendants.

1 **I. INTRODUCTION**

2 Defendant Sony Computer Entertainment America LLC (“SCEA”) and non-party Sony  
3 Network Entertainment International LLC (“SNEI”) are named as defendants in a putative class  
4 action initiated in this District titled *Fineman v. Sony Network Entertainment International LLC,*  
5 *et al.*, Case No. 11-cv-05680 (“*Fineman*”). SCEA and SNEI respectfully submit this  
6 Administrative Motion to consider whether the *Fineman* action should be related to the above-  
7 captioned matters: *In re Sony PS3 Other OS Litigation*, Case No. 10-cv-1811-RS (“*Other OS*”)  
8 and *Garcia v. Sony Computer Entertainment America, LLC, et al.*, Case No. 11-cv-02246-RS  
9 (“*Garcia*”), which, good cause appearing, was previously reassigned to the Hon. Richard  
10 Seeborg, sua sponte.<sup>1</sup> Because the requirements of Local Rule 3-12(a) are satisfied, the Court  
11 should relate *Fineman* to the *Other OS* and *Garcia* matters.

12 **II. THE CASES ARE RELATED UNDER LOCAL RULE 3-12(a)**

13 Pursuant to Local Rule 3-12(a), an action is related to another when:

14 (1) The actions concern substantially the same parties, property,  
15 transaction or event; and

16 (2) It appears likely that there will be an unduly burdensome duplication  
17 of labor and expense or conflicting results if the cases are conducted  
before different Judges.

18 L.R. 3-12(a). These criteria are clearly satisfied here. The named plaintiff in *Fineman* seeks to  
19 represent a class of PS3 purchasers who accessed the PlayStation®Network (“PSN”), a class that  
20 overlaps with the purported class of PS3 purchasers in both *Other OS* and *Garcia*. SCEA, a  
21 defendant in both *Other OS* and *Garcia*, is (with other Sony entities) a defendant in *Fineman* as  
22 well. Thus, all three actions concern substantially the same parties.

23 Each case likewise involves overlapping property (the PS3) and transactions (access to the  
24 PSN and agreement to associated Terms of Service and User Agreements) and seeks duplicative  
25 relief in the form of restitution of part or all of the PS3 purchase price. For example, the plaintiff  
26 in *Fineman* argues that SCEA and other Sony entities improperly precluded PSN access for  
27 consumers who did not agree to revised PSN terms of service, while the plaintiffs in *Other OS*

28 <sup>1</sup> See the Declaration of Carter Ott (“Ott Decl.”), Ex. A, filed herewith.

1 argued that SCEA improperly precluded PSN access for consumers who did not agree to a  
2 specific PS3 firmware update. The Court addressed the continued availability of PSN access at  
3 length in its December 8, 2011 *Other OS* order; this issue may similarly need to be addressed in  
4 *Fineman*.

5 **III. THE COURT MAY RELATE *FINEMAN* TO THE DISMISSED *OTHER OS*.**

6 The Court recently dismissed the *Other OS* action with prejudice.<sup>2</sup> In the interest of  
7 conserving judicial resources, the Court may nonetheless relate the *Fineman* and *Other OS* cases.  
8 Local Rule 3-12(b) specifically anticipates this situation, requiring a motion such as this from any  
9 party who “knows or learns that an action, filed in or removed to this district is...related to an  
10 action which is *or was* pending in his District.” L.R. 3-12(b) (emphasis added).

11 This Rule recognizes that the efficiency gains associated with assigning related cases to  
12 the same Judge do not depend on the cases pending simultaneously. A Judge assigned to a case  
13 related to a previously dismissed matter will be familiar with the overlapping issues whether or  
14 not the case providing that familiarity has been resolved. For example, in both *Benavides v.*  
15 *Bush*, 2008 WL 170431 (N.D. Cal. Jan. 18, 2008) and *Goodman Ball, Inc. v. Mach II Aviation,*  
16 *Inc.*, 2010 WL 4807090 (N.D. Cal. Nov. 19, 2010), newly-filed cases were related to matters that  
17 had been previously dismissed. *Benavides* at \*1 (relating cases where plaintiff previously sued  
18 the same defendant in a dismissed matter); *Goodman Ball* at \*3 (relating cases despite the  
19 addition of defendants not parties to previously dismissed matter).

20 **IV. MEMBERS OF THE PUTATIVE CLASS IN *FINEMAN* OVERLAP WITH THE**  
21 **PUTATIVE *GARCIA* CLASS.**

22 The putative class in *Garcia* is so broad that it encompasses members of the putative class  
23 defined in *Fineman*. *Garcia* was brought against SCEA on behalf of “[a]ll persons who  
24 purchased a non-‘Slim’ model of SONY’s Playstation®3 console in the United States from the  
25 date they were first sold until the date notice is provided to the Class.”<sup>3</sup> The *Fineman* action was  
26 brought on behalf of “[a]ll individuals in the United States of America who (a) purchased a new

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28 <sup>2</sup> *In re Sony PS3 Other OS Litig.*, 2011 WL 6117892 (N.D. Cal. Dec. 8, 2011)

<sup>3</sup> Ott Decl., Ex. B, ¶ 54.

1 Sony PlayStation 3 (PS3) prior to September 15, 2011, and (b) accessed the Sony PlayStation  
2 Network (PSN) through their PS3 prior to September 15, 2011 and accepted the Sony  
3 Entertainment Network Services' Terms of Service and User Agreement.”<sup>4</sup>

4 In other words, the putative classes in both cases include PSN users who purchased a non-  
5 “Slim” PS3 from November 17, 2006 (when the PS3 was first sold) until September 14, 2011.  
6 Resolving whether these classes are appropriate for certification will be far more efficient before  
7 one Judge already familiar with the products and concepts at issue and will eliminate the risk of  
8 inconsistent results.

9 **V. THERE WILL BE AN UNDULY BURDENSOME DUPLICATION OF LABOR**  
10 **AND EXPENSE OR CONFLICTING RESULTS IF THE CASES ARE**  
11 **CONDUCTED BEFORE DIFFERENT JUDGES.**

12 If the *Fineman* case is conducted before a different judge, there will be obvious  
13 duplication of the Court's efforts in *Other OS* and its continuing efforts in *Garcia*. Each case will  
14 require familiarity with similar issues such as the PSN Terms of Service and User Agreement and  
15 the functions and uses of the PS3 or PSN. This Court already obtained familiarity with such  
16 issues during the pendency of the *Other OS* case and *Garcia* matters. Moreover, SCEA would be  
17 required to defend related lawsuits before separate judges of the same district court at the same  
18 time, where the lawsuits describe overlapping putative classes disputing the same property and  
19 transactions. See *In re Leapfrog Enterprises, Inc. Securities Litigation*, 2005 WL 5327775, at \*1  
20 (N.D. Cal. Jul. 5, 2005). Because the requirements of Local Rule 3-12(a) are satisfied, the Court  
21 should relate *Fineman* to the *Other OS* and *Garcia* matters.

22 Finally, both *Garcia* and *Fineman* remain at very early stages of litigation, such that there  
23 would be no risk of possible prejudice to the parties in *Fineman* if this Court were to assume that  
24 assignment. In the *Garcia* case, the named plaintiff filed a Second Amended Class Action  
25 Complaint only two months ago, which is currently the subject of a motion to dismiss. The  
26 *Fineman* case was filed just last month.

27 **IV. CONCLUSION**

28 Based on the foregoing, defendant SCEA and non-party SNEI respectfully request that, in

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<sup>4</sup> *Id.*, Ex. C, ¶ 26.

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accordance with Local Rule 3-12, the *Fineman* case should be related to the *Other OS* and *Garcia* cases and assigned to this Court.

Dated: December 22, 2011

DLA PIPER LLP (US)

By /s/ Carter Ott  
CARTER OTT  
Counsel for Defendant Sony Computer  
Entertainment America LLC and Non-Party  
Sony Network Entertainment International LLC