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 10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

11
 12 ANTHONY VENTURA, on behalf of himself
 13 and all others similarly situated,

14 Plaintiff,

15 SONY COMPUTER ENTERTAINMENT
 16 AMERICA INC.,

17 Defendant.

Case No. 3:10-cv-01811 RS

**DECLARATION OF ROSEMARY M.
 RIVAS IN SUPPORT OF PLAINTIFFS'
 MOTION FOR ORDER (1)
 CONSOLIDATING CASES, AND (2)
 APPOINTING FINKELSTEIN
 THOMPSON LLP AS INTERIM, CO-
 LEAD CLASS COUNSEL**

Date: June 24, 2010
 Time: 1:30 p.m.
 Courtroom: 3

The Honorable Richard Seeborg

1 This document also relates to:
2 TODD DENSMORE and ANTAL HERZ, on
3 behalf of themselves and all others similarly
4 situated,
5
6 Plaintiffs,
7
8 v.
9
10 SONY COMPUTER ENTERTAINMENT
11 AMERICA, INC., a Delaware corporation,
12
13 Defendant.

Case No. 3:10-cv-01945 EDL
The Honorable Elizabeth D. Laporte

10 This document also relates to:
11 JASON BAKER, SEAN BOSQUETT,
12 FRANK BACHMAN, PAUL GRAHAM , and
13 PAUL VANNATA, Individually and on
14 Behalf of All Others Similarly Situated,
15
16 Plaintiffs,
17
18 vs.
19
20 SONY COMPUTER ENTERTAINMENT
21 AMERICA, LLC successor to SONY
22 COMPUTER ENTERTAINMENT
23 AMERICA, INC.
24
25 Defendant.

Case No. 3:10-cv-01897 SC
The Honorable Samuel Conti

19 This document also relates to:
20 KEITH WRIGHT, on behalf of himself and all
21 others similarly situated,
22
23 Plaintiff(s),
24
25 v.
26
27 SONY COMPUTER ENTERTAINMENT
28 AMERICA INC.; and SONY COMPUTER
ENTERTAINMENT AMERICA, LLC.
Defendants.

Case No. 3:10-cv-01975 JL
The Honorable James Larson

1 I, Rosemary M. Rivas, declare as follows:

2 1. I am a partner with Finkelstein Thompson LLP, counsel of record for Plaintiffs
3 Todd Densmore and Antal Herz. I am a member in good standing of the bar of the State of
4 California and am admitted to practice in this Court. I submit this declaration in support of
5 Plaintiffs' motion for an order appointing Finkelstein Thompson LLP as interim, co-lead class
6 counsel. My declaration is based on my firm's records and my personal knowledge of the facts,
7 and, if called to do so, could and would testify competently thereto.

8 **FT'S QUALIFICATIONS, EXPERIENCE AND RESOURCES**

9 2. Finkelstein Thompson LLP ("FT") is a 20 lawyer firm with offices on both sides
10 of the country in San Francisco, California and Washington D.C. FT has been in business for 33
11 years and is nationally recognized as a premier class action firm. FT's practice focuses on class
12 actions in three key areas: antitrust, consumer fraud and securities violations. Attached hereto
13 as **Exhibit A** is a true and correct copy of FT's current firm resume, reflecting the firm's
14 experience in class action and other complex litigation. FT has recovered hundreds of millions
15 of dollars on behalf of consumers and investors nationwide.

16 3. FT's named partners have over 70 years of combined experience in the
17 prosecution and defense of complex civil and criminal matters. The other partners and associates
18 have extensive experience in a variety of complex litigation fields. The firm has practiced in
19 state and federal trial and appellate courts across the country; before the Securities and Exchange
20 Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, the
21 Federal Communications Commission, the U.S. Copyright Office, the New York Stock
22 Exchange, the Chicago Board of Trade, the National Association of Securities Dealers, and the
23 National Futures Association.

24 4. FT has extensive experience in prosecuting class actions from the pleading stage
25 through trials and appeals, and in handling multi-district and consumer fraud litigation in
26 particular. The firm has represented clients throughout the United States in complex consumer
27 fraud, antitrust, and securities class actions. FT has successfully prosecuted numerous class
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1 action matters, has held leadership positions in a number of precedent-setting cases, and has
2 developed a reputation for successful and thorough representation of class clients against many
3 of the largest and most powerful companies in the country.

4 5. FT has the experience, ability and resources to prosecute this action vigorously.
5 In addition to its attorneys, who have developed a national reputation for excellent work, the firm
6 also maintains a staff of paralegals, litigation support staff and an in-house financial analyst. FT
7 has the financial resources to commit to aggressively litigate this case and fully intends to do so.

8 6. In affirming an antitrust class action settlement of \$49 million achieved by FT,
9 one of the firms appointed class counsel, the Ninth Circuit stated that there was no dispute “that
10 counsel had considerable experience in litigating antitrust matters, class actions, and other
11 complex litigation.” *Rodriguez v. West*, 563 F.3d 948, 967 (9th Cir. 2009). In *Freeland v.*
12 *Iridium World Communications*, Case No. CR 99-1002 (D.D.C.), the Honorable Nanette K.
13 Laughrey commended FT and its co-counsel for their work in achieving a \$43.1 million
14 settlement, stating, “[a]ll of the attorneys in this case have done an outstanding job, and I really
15 appreciate the quality of the work we had in our chambers as a result of this case.” Similarly, in
16 *In re Interbank Funding Corp. Sec. Litig.*, Case No. 02-1490 (D.D.C.), Judge Bates of the
17 District Court for the District of Columbia observed that FT had “skillfully, efficiently, and
18 zealously represented the class, and . . . worked relentlessly throughout the course of the case.”

19 7. Representative settled class actions by FT include:

20 • *National Metals, Inc. v. Sumitomo Corp.*, Case No. 734001 (Cal. Super. – San
21 Diego): As co-lead counsel in class action for antitrust violations, FT achieved settlements with
22 several defendants for \$81 million.

23 • *In re Natural Gas Commodity Litigation*, Case No. 03cv6186 (S.D.N.Y.): As co-
24 lead class counsel, FT achieved over \$100 million in settlements.

25 • *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, Case No.
26 05cv1671 (C.D. Cal.): As co-lead class counsel in class action for antitrust violations, FT
27 achieved a settlement in the amount of \$48 million.

28 • *Rodriguez v. West*, 563 F.3d 948 (9th Cir. 2009): As one of three law firms

1 appointed class counsel in class action for antitrust violations in the bar review market, FT
2 achieved settlement in the amount of \$49 million which was affirmed by the Ninth Circuit.

3 • *Grecian v. Meade Instruments, Inc.*, Case no. 06cv908 (C.D. Cal.): As Lead
4 Counsel, FT achieved \$3 million settlement on behalf of shareholders claiming securities fraud
5 violations related to alleged illegal backdating of executive stock options.

6 • *Holly Glenn v. Polk Audio, Inc.*, Case No. 99cv4768 (Md. Cir. – Baltimore): As
7 co-lead counsel, FT achieved \$4.8 million settlement.

8 • *In re Merrill Lynch & Co., Inc. Research Reports Litigation*, MDL Docket No.
9 1484 (S.D.N.Y.): As an executive committee member (and lead counsel in six of the underlying
10 actions), FT achieved \$125 million settlement.

11 • *PaineWebber Securities Litigation*, Case No. 94cv8547 (S.D.N.Y.): As an
12 executive committee member, FT achieved \$200 million settlement.

13 • *Prudential Securities Litigation*, MDL Docket No. 1005 (S.D.N.Y.) As executive
14 committee member & co-chair of the settlement committee, FT achieved \$150 million
15 settlement.

16 • *Rudolph vs. UT Starcom, et al*, Case No. 3:07-CV-04578-SI (N.D. Cal.): As sole
17 Lead Counsel in securities class action, FT negotiated a settlement totaling \$9.5 million.

18 • *Conroy, et al. v. 3M Corporation, et al.*, Case No. 4:00-CV-2810 CW (N.D. Cal.):
19 As co-lead counsel in class action for antitrust violations, FT achieved a settlement valued at \$41
20 million.

21 8. Representative ongoing actions in which FT plays a prominent role include:

22 • *Lima v. Gateway*, Case No. SACV09-01366 DMG (C.D. Cal.): FT serves as lead
23 counsel in this class action alleging that Gateway made representations that were likely to
24 deceive reasonable consumers and failed to disclose material information in connection with the
25 sale of its computer monitors. In this role, FT persuaded Judge Dolly M. Gee that the case was
26 not subject to the rule announced in *Daugherty v. Am. Honda Motor Co., Inc.*, 144 Cal. App. 4th
27 824, 51 Cal. Rptr. 3d 118 (Cal. Ct. App. 2006) and its progeny. As a result of FT's efforts, Judge
28 Gee denied defendant's motion to dismiss in its entirety.

1 • *In re Facebook PPC Advertising Litigation*, Case No. C 09-03043 JF (N.D. Cal.):
2 Judge Jeremy Fogel appointed FT as co-lead counsel in this class action on behalf of advertisers
3 alleging charges for “invalid clicks.” FT defeated Facebook’s attempts to dismiss the litigation
4 at the pleading stage.

5 • *In re DirecTV Early Cancellation Fee Marketing and Sales Practices Litigation*,
6 Case No. 8:09-ml-2093AG (C.D. Cal.): Judge Andrew Guilford appointed FT as one of four
7 members of an Executive Committee in this multidistrict litigation. FT has been actively
8 involved in pleading the complaint, motion practice and discovery.

9 • *In re Sony PS3 Litigation*, Case No. 09-4701 RS (N.D. Cal.): FT serves on the
10 executive committee in this litigation involving the Sony PlayStation 3 electronic gaming
11 system. In this role, FT was involved in drafting the consolidated complaint and worked on
12 opposing Sony’s motion to dismiss, which is currently scheduled for hearing.

13 • *Crowley v. J.P. Morgan Chase & Co.*, Case No. 112540/09 (Sup. Ct. N.Y.): FT
14 serves as one of two co-leads in this class action alleging that the defendants systemically
15 decrease customer credit limits without timely and reasonable notice of the decrease. In this
16 role, FT has acted as the primary liaison in the communications between Plaintiff and counsel for
17 J.P. Morgan Chase & Co.

18 • *Ironworkers Local No. 399 and Participating Employers Health And Welfare*
19 *Funds v. Janssen, L.P.*, Case No. 3:06-cv-03044-FLW-JJH (D.N.J): FT is lead counsel of third-
20 party payor class actions alleging that Janssen and Johnson & Johnson promoted and
21 disseminated misleading messages about the safety and efficacy of the off-label use of
22 Risperdal®. To date, FT has, among other things, facilitated the organization of meetings and
23 conference calls with counsel, attended hearings, and managed the filing of the Consolidated
24 Amended Complaint.

25 • *In re Aqua Dots Products Liability Litigation*, MDL No. 1940, Case No. 1:08-cv-
26 02364 (N.D.II.): FT is one of four co-leads in this national class action brought on behalf of
27 purchasers of Chinese-made Aqua Dots toys containing a toxic coating. In this role, FT has
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1 participated in all aspects of the case, including discovery and drafting the motion for class
2 certification and opposition to the motion to dismiss.

3 **QUALIFICATIONS OF FT'S LEAD ATTORNEYS IN THIS ACTION**

4 9. I, along with my partner, Douglas G. Thompson, are the lead attorneys from FT in
5 the instant litigation. I graduated from the University of California, Hastings College of the Law
6 in May 2000 and was admitted to practice in California in December 2000. I have extensive
7 experience prosecuting class actions, especially in cases arising under California's Unfair
8 Competition Law, Bus. & Prof. Code § 17200 *et seq.* ("UCL"), California's Consumers Legal
9 Remedies Act, Civ. Code § 1750 *et seq.* ("CLRA"), and cases involving common law claims for
10 breach of contract and unjust enrichment – the types of claims in this litigation. I have spent my
11 entire legal career representing plaintiffs in class action cases. I currently serve as court-
12 appointed interim, co-lead class counsel in *In Re Facebook PPC Advertising Litigation*, Case No.
13 C 09-03043 JF (N.D. Cal.), as lead counsel in *Lima v. Gateway, Inc.*, Case No. SACV09-01366
14 DMG (C.D. Cal.), and in a leadership capacity in a number of other class actions, including *In Re*
15 *DirecTV Early Cancellation Fee Litigation*, Case No. 09-MDL-2093 AG (C.D. Cal.). In 2009
16 and 2010, I was selected as a *Rising Star* by Law & Politics Magazine which recognizes the best
17 lawyers in Northern California 40 years old or younger or in practice for 10 years or less.

18 10. Additional representative cases that I have worked on and which reached a
19 successful conclusion include:

20 • *In re LookSmart Litigation*, Case No. 02-407778 (Cal. Super. Ct. San Francisco):
21 This national class action suit was based on allegations that LookSmart advertised a "one time
22 payment" for unlimited clicks to websites listed in LookSmart's directory, only to later charge
23 additional payments for continued service and involved claims for breach of contract and
24 violation of the UCL and CLRA, among others. A national class action settlement providing
25 cash and benefits valued at approximately \$20 million was granted final approval.

26 • *In re iPod Litigation*, Case No. CIV 436509 (Cal. Super. Ct. San Mateo County):
27 This national class action case was based on allegations that Apple, Inc. made material omissions

1 and misrepresentations regarding the iPod's battery life in violation of the UCL and the CLRA.
2 The parties reached a nationwide class action settlement providing for warranty extension,
3 battery replacements, cash payments and store credits to class members valued at approximately
4 \$15 million.

5 • *Lehman v. Blue Shield of California*, Case No. CGC-03-419349 (Cal. Super. Ct.
6 San Francisco County): This class action case was based on allegations that Blue Shield
7 breached the implied covenant of good faith and fair dealing and committed unfair business
8 practices when it implemented risk tier changes and premium increases in connection with its
9 Individual and Family Health Plans. Blue Shield vigorously contested liability and class
10 certification before ultimately agreeing to a cash settlement of \$6.5 million on behalf of a
11 California class.

12 • *Mackhouse v. The Good Guys – California, Inc.*, Case No. 2002-049656 (Cal.
13 Super Ct. Alameda County): This national class action suit was filed against The Good Guys and
14 its affiliates alleging violations of the Song-Beverly Warranty Act and other California consumer
15 protection statutes based on allegations that The Good Guys failed to honor its service contracts
16 which were designed and sold to offer customers protection after the expiration of the
17 manufacturer's warranty. A national class settlement providing for cash refunds or services at
18 class members' election was granted final approval.

19 11. Mr. Thompson has been in private practice for over 30 years. Mr. Thompson
20 received his A.B. and M.A. degrees in economics from Stanford University and his J.D. degree
21 from Stanford Law School in 1969. He taught at the Stanford Law School in 1969-70 and
22 clerked for Judge Ben. C. Duniway of the United States Court of Appeals, Ninth Circuit, in
23 1970-71. Following his clerkship, Mr. Thompson joined the law firm of Wilmer, Cutler &
24 Pickering, Washington, D.C., where he was a litigator in communications and securities law. In
25 1977, he joined with Mr. Burton Finkelstein in the formation of the firm now known as
26 Finkelstein Thompson LLP.

27 12. Mr. Thompson has represented clients in federal court and before the Securities
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1 and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade
2 Commission, the Federal Communications Commission, the Copyright Royalty Tribunal, and the
3 Criminal Division of the Department of Justice. During the late 1980's and early 1990's, Mr.
4 Thompson litigated securities and commodities claims in failed savings and loan cases on behalf
5 of the RTC and FDIC. More recently, Mr. Thompson has turned to the litigation of nationwide
6 antitrust, market manipulation and securities fraud class actions and has been plaintiffs' co-lead
7 counsel, or has served on the plaintiffs' executive committee, in a number of major matters,
8 including Microsoft antitrust, natural gas commodity price manipulation, Sumitomo copper price
9 manipulation and the Merrill Lynch research report fraud litigation. Mr. Thompson also
10 continues to act as defense counsel in securities enforcement matters and recently acted as lead
11 trial counsel in the successful defense of insider trading claims brought by the SEC.

12 **FT HAS PERFORMED SIGNIFICANT WORK IN THIS ACTION**

13 13. FT has devoted substantial hours and resources in this action. FT launched its
14 investigation on March 28, 2010, in response to requests from consumers seeking representation
15 and even before Sony eliminated the "Install Other OS" function. In fact, PS3 users informed FT
16 that they were contacting the firm because they had heard about FT's reputation in pursuing class
17 actions and they believed that FT could help them. As part of its investigation, FT reviewed: (1)
18 Sony's advertisements and public statements about the PS3's features and functionality,
19 including the "Install Other OS Feature," and future firmware updates; (2) Sony's warranty; (3)
20 Sony's terms and conditions; (4) the PS3 owner manual; and (5) Sony's system software
21 licensing agreement. FT extensively investigated Sony's actions, the Firmware 3.21 (including
22 the advantages and disadvantages of installing it), as well as the history of the "Install Other OS"
23 function. Both Plaintiffs Densmore and Herz have been involved in this case and the
24 development of the complaint.

25 14. Since *Densmore* was filed, FT has continued to receive inquiries from numerous
26 PS3 owners regarding the complaint and their possible participation in the action. FT has
27 responded to these inquiries via email and/or telephone and has received additional information
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1 regarding customer dissatisfaction with Sony's actions. FT has compiled a list of these PS3
2 owners, their contact information, and the factual information provided to FT.

3 15. In this litigation, FT reached out to Meiselman, Denlea, Packman, Carton & Eberz
4 P.C. ("MDPCE"), counsel for Plaintiff Ventura. I contacted Jeffrey Carton of MDPCE the week
5 of May 10, 2010 to discuss strategy for the case and an inclusive co-leadership structure for
6 plaintiffs' counsel that would serve the best interests of the Class. On May 17, 2010, Mr. Carton
7 telephoned me and informed me that MDPCE and Calvo & Clark LLP ("C&C"), the firm that
8 filed the fourth action (*Wright*), would seek appointment as interim, co-lead class counsel. An
9 hour or so later, MDPCE and C&C filed their motion for appointment of interim, co-lead class
10 counsel.

11 16. My firm has a reputation for working cooperatively with other firms. The number
12 of cases in which the firm has served as lead or co-lead counsel, and in others as a member of an
13 executive committee, reflects the firm's ability to work well and successfully with other firms. If
14 my firm is appointed as interim, co-lead class counsel, my firm will ensure that work will be
15 divided fairly amongst interested firms according to their skills and knowledge, and so as to
16 avoid duplication of efforts.

17 I declare under the penalty of perjury under the laws of the State of California and the
18 United States that the foregoing is true and correct. Executed this 19th day of May 2010 at San
19 Francisco, California.

20 /s/ Rosemary M. Rivas
21 Rosemary M. Rivas