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5
 6 Attorneys for Plaintiff Anthony Ventura
 and all others similarly situated

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 9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

15 v.

16 SONY COMPUTER ENTERTAINMENT
 17 AMERICA INC.,
 18 Defendant.

Case No. C10-01811 RS

**DECLARATION OF JEFFREY I.
 CARTON IN SUPPORT OF PLAINTIFF
 VENTURA'S MOTION FOR ORDER:**

- (1) FINDING CASES RELATED,**
- (2) CONSOLIDATING RELATED
 CASES,**
- (3) APPOINTING INTERIM CO-LEAD
 COUNSEL, AND**
- (4) SETTING CASE MANAGEMENT
 DATES**

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

21 Jeffrey I. Carton declares pursuant to 28 U.S.C. § 1746 as follows:

22 1. I am a member of the law firm of Meiselman, Denlea, Packman, Carton & Eberz
 23 P.C. ("MDPCE"), attorneys for Plaintiff Anthony Ventura and the putative class members in
 24 Ventura v. Sony Computer Entertainment America Inc., No. 10 Civ. 1811 (N.D. Cal) (EMC). I
 25 submit this declaration in support of Plaintiff Ventura's Motion for Order Finding Cases Related,
 26 to Consolidate Related Cases, for Appointment of MDPCE and Calvo & Clark, LLP ("Calvo &
 27 Clark") as Interim Co-Lead Counsel, and setting case management deadlines.
 28

1 2. MDPCE attorneys can offer significant benefits and value to the prosecution of this
2 action. This is an important case affecting millions of consumers and one of the largest electronics
3 manufacturers in the world. MDPCE attorneys are experienced trial lawyers, and our prior service
4 on leadership positions in various class actions provides the necessary skills and qualifications to
5 serve as Interim Co-Lead Counsel. In short, MDPCE attorneys, along with Calvo & Clark, are
6 well equipped to efficiently and effectively prosecute this matter because they (i) have the required
7 substantive legal experience and resources, (ii) have litigated a number of class actions in
8 California courts, and (iii) have demonstrated their ability to work cooperatively with other firms
9 in a number of large and complex class actions.

10 3. MDPCE and Calvo & Clark can thus efficiently and effectively represent the
11 interests of the members of the proposed class.

12 **MDPCE HAS SUBSTANTIAL KNOWLEDGE AND EXPERIENCE**
13 **IN PROSECUTING COMPLEX CLASS ACTIONS**

14 4. As recognized by jurists before whom they have practiced, MDPCE attorneys are
15 highly qualified and have extensive experience in complex civil litigation and consumer class
16 actions. We understand the duties imposed upon class counsel in consumer fraud class actions,
17 and we have proven adept at all phases of such litigation, from discovery and motion practice to
18 trial and appeal or settlement.

19 5. MDPCE was established approximately 35 years ago. Many of the firm's
20 attorneys graduated with honors from the Boalt Hall School of Law, Harvard, Columbia, New
21 York University, and other top law schools, and previously practiced at prominent national firms.

22 6. The attorneys principally involved in this matter are very experienced, having
23 litigated numerous complex civil actions, including many class action and consumer lawsuits in
24 state and federal courts throughout the country (including in California).

- 25 • I am the chairman of MDPCE's commercial litigation department. I have
26 successfully prosecuted class action lawsuits against, among others, Costco, Blue
27 Cross/Blue Shield, CortiSlim, Shell, Hollywood Tanning Systems, Inc., The Gap,
28 Inc., and its subsidiary Old Navy LLC. I graduated from Dartmouth College in

1 1988 and Columbia University Law School in 1991. I am admitted to the New
2 York and Connecticut state bars, as well as several federal district courts. I have
3 also been published on the subject matter of class actions. See “A New
4 Battleground For The Class Action War,” New York Law Journal (Oct. 2006). I
5 intend to request that this Court admit me to litigate this matter *pro hac vice*, as I
6 am an active member in good standing of the New York and Connecticut state
7 bars.

- 8 • Rebecca Coll is an experienced class action and trial lawyer licensed to practice in
9 California, New York, and the District of Columbia. Ms. Coll practiced almost
10 exclusively in California for more than twelve years. She has represented
11 businesses and individuals in cases involving fraud, unfair business practice
12 claims, employment matters, and a wide variety of tort claims. Ms. Coll played
13 an active role in San Francisco's successful litigation against the tobacco industry
14 in the 1990s. Since that time she has litigated numerous multi-million dollar
15 plaintiffs' class actions, including nationwide consumer fraud cases involving
16 health products, automobiles, software and electronic equipment. Ms. Coll is a
17 1996 graduate of Boalt Hall School of Law at the University of California at
18 Berkeley, and has a Bachelor of Arts from the University of Michigan.
- 19 • Jerome Noll is a member of the New York State Bar, the United States District
20 Court for the Southern and Eastern Districts of New York and the United States
21 Court of Appeals, Second Circuit. Mr. Noll specializes in complex commercial
22 litigation, class actions and derivative suits in state and federal courts. As a
23 founding member of his own firm in New York, Mr. Noll was lead counsel in a
24 number of nationwide class actions, including a consumer class action brought
25 under the Delaware Consumer Fraud Act wherein the Superior Court certified a
26 nationwide class of approximately 28 million consumers and approved a class-
27 wide settlement valued at more than \$30 million. The National Consumer Law
28 Center has recognized Mr. Noll as being among the leading practitioners in the

1 country representing plaintiffs in these matters by inviting him to sit on that
2 organization's Partner Round Table. Mr. Noll received his B.A., cum laude, in
3 Politics and History from Brandeis University in 1991. He attended law school at
4 the Benjamin N. Cardozo School of Law, and earned his J.D. in 1994. While in
5 law school, he was a Samuel Belkin Scholar, editor of the Cardozo Studies in Law
6 and Literature and a member of the Cardozo Women's Law Journal. Mr. Noll
7 intends to request that this Court admit him to litigate this matter *pro hac vice*, as
8 he is an active member in good standing of the New York bar.

- 9 • D. Greg Blankinship is a member of the Massachusetts bar, the United States
10 District Court for the Districts of Massachusetts and the United States Court of
11 Appeals, First Circuit. Mr. Blankinship specializes in complex commercial
12 litigation, class actions and securities suits in state and federal courts. Prior to
13 joining the firm, Mr. Blankinship was an Associate with Skadden, Arps, Slate,
14 Meagher & Flom LLP and Greenberg Traurig, LLP. Mr. Blankinship has worked
15 on numerous nationwide, multi-district class actions, including securities,
16 consumer fraud and wage and hour matters. Mr. Blankinship received his B.A.
17 from Emory University in 1991 and his M.A. from the University of North
18 Carolina in 1995. He attended law school at the University of Washington, where
19 he earned his J.D. in 2001. While in law school, Mr. Blankinship was a member
20 of the University of Washington Law Review. Mr. Blankinship intends to request
21 that this Court admit him to litigate this matter *pro hac vice*, as he is an active
22 member in good standing of the Massachusetts bar.

- 1 • Llanos v. Shell Oil Co. And Shell Oil Products US, Index No. SU-2006-009404
2 (N.Y. Sup. Ct., Rockland County). Statewide class action alleging that Shell
3 improperly imposed monthly inactivity or dormancy fees on Shell Gift Cards in
4 violation of New York Gen. Bus. L. § 349 and Shell’s contracts with its
5 customers. The court certified the class and approved a settlement on March 31,
6 2010, and MDPCE was certified as class counsel.
- 7 • Nafar v. Hollywood Tanning Sys. Inc., 06-CV-03826 (D. N.J.). Nationwide
8 consumer class action alleging that the defendant’s tanning salons are deceptively
9 marketed. MDPCE was appointed class counsel on August 11, 2008.
- 10 • Hager v. Vertrue, Inc., No. 09-11245 (D. Mass.). Statewide class action alleging
11 that Defendant’s practice of imposing unauthorized charges upon unsuspecting
12 consumers who order credit protection services without the customer’s
13 permission.

14 8. MDPCE attorneys have also been certified class counsel in the following cases
15 successfully resolved to the substantial benefit of the class members:

- 16 • Duronslet v. TransWorld Sys., Inc., No. 12685 (DDP) (C.D. Cal.). Nationwide
17 class action brought on behalf of 1.5 million consumers against a debt collection
18 firm alleging violations of the FDPCA. The Court approved a substantial
19 settlement for the class and an injunction prohibiting further violations of the Act.
- 20 • Breedlove v. Window Rock Ent., Inc., No. 04 CC 00610 (Cal. Super. Ct. Orange
21 Cty.). Consumer class action challenging false and deceptive advertising for the
22 popular diet supplement CortiSlim. The case was resolved on a nationwide class
23 basis, including the creation of a \$6 million consumer redress fund.
- 24 • Luks v. Empire Blue Cross/Blue Shield, No. 03/64337 (N.Y. Sup. Ct. N.Y. Cty.).
25 Statewide class action brought on behalf of more than 1,000 surgeons that
26 compelled insurer to revoke its policy, commonly referred to as the “single
27 incision” policy, of refusing to cover certain medically appropriate surgical
28

1 procedures. The settlement resulted in millions of dollars of reimbursable claims
2 being paid to New York surgeons.

- 3 • Fox v. Cheminova, Inc., No. 00-5145 (E.D.N.Y.). Class action brought against
4 pesticide manufacturer on behalf of commercial lobstermen on Long Island
5 Sound, alleging destruction of lobster stock. The court certified the class and
6 approved a \$15 million settlement.
- 7 • Dupler v. Old Navy LLC and The Gap, Inc., No. 06/008356 (N.Y. Sup. Ct.,
8 Nassau Cty.). Consumer class action brought under N.Y. Gen. Bus. L. § 349 and
9 other legal theories, alleging consumers were short-changed when returning
10 merchandise bought with store-issued coupons. On August 6, 2007, the court
11 approved a settlement providing a benefit of \$14 million to class members.
- 12 • Rinaldi v. Iomega Corp., No. 98C-09-064RRC (Del. Super. Ct.). Nationwide
13 consumer class action alleging that the defendant's Zip Disk Drive product
14 contained manufacturing and design defects which rendered the drives potentially
15 inoperable, in violation of the Delaware Consumer Fraud Act and common law.
16 The court certified a nationwide class of approximately 28 million consumers,
17 approved a settlement valued in the tens of millions of dollars, and awarded class
18 counsel more than \$4.7 million in legal fees.

19 **MDPCE ATTORNEYS HAVE SUBSTANTIAL EXPERIENCE**
20 **PROSECUTING CONSUMER ELECTRONICS CLASS ACTIONS**

21 9. In addition to MDPCE's substantial experience prosecuting consumer class actions,
22 MDPCE attorneys also have substantial experience in class actions concerning consumer
23 electronic matters, both in the Northern District of California and elsewhere:

- 24 • Berenblatt v. Apple, Inc., No. 08-4969 (JF) (N.D. Cal.). Proposed nationwide
25 class action alleging that Apple's PowerBook G4 computers have a known,
26 widespread and commonplace characteristic defect and design flaw which renders
27 one or more of the PowerBook G4's memory slots inoperative.

- 1 • Wilson v. Gateway, Inc., No. 09-07560 (GW) (C.D. Cal.). Proposed nationwide
2 class action alleging that Gateway improperly assigned its warranties to an
3 insolvent company in an effort to impair its customers' ability to obtain the
4 services for which they paid considerable sums.
- 5 • Create-A-Card v. Intuit, No. 07-6452 (WHA) (N.D. Cal.). Nationwide class
6 action alleging that Intuit's faulty programming caused QuickBooks for Mac
7 users to lose the contents of their desktops.
- 8 • Nikolin V. Samsung Electronics America, Inc., No. 10-01456 (GEB) (MCA)
9 (D.N.J.). Proposed nationwide class action alleging that Samsung misled
10 consumers by misleadingly and confusingly calling certain televisions "LED
11 TVs" or light emitting diode televisions when they are not.
- 12 • In re Mercedes-Benz Tele-Aid Contract Litig., MDL 1914 (D.N.J.). Nationwide
13 class action alleging that Mercedes-Benz misled consumers regarding an
14 emergency-response system that Mercedes-Benz knew would soon become
15 obsolete.

16 **MDPCE ATTORNEYS HAVE DEMONSTRATED THEIR**
17 **ABILITY TO LEAD A COOPERATIVE LEADERSHIP STRUCTURE**

18 10. MDPCE attorneys have substantial experience in participating in cooperative
19 leadership structures in class actions:

- 20 • In re: TicketMaster Sales Practices Litig., No. 09 CV 912 (ABC) (C.D. Cal.)
21 Nationwide class action alleging that TicketMaster's deceptive practices misled
22 consumers into paying well above face value for tickets when tickets were
23 available at face value. MDPCE was named Co-Lead counsel on July 17, 2009.
- 24 • In re: VistaPrint Corp. Mktg and Sales Practices Litig., No. 08-md-1994 (NFA)
25 (S.D. Tex.). Nationwide class action alleging that VistaPrint's practice of
26 imposing unauthorized charges upon unsuspecting consumers who order services
27 or merchandise from VistaPrint and whose personal and confidential credit card
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1 and bank account information is then accessed by third party marketers without
2 the customer's permission. MDPCE was appointed Co-Lead counsel in this
3 multidistrict litigation.

- 4 • In Re: Principal U.S. Property Account Litigation, No. 09-cv-9889 (CM)
5 (S.D.N.Y.). Nationwide class action alleging Principal breached its fiduciary
6 duties under ERISA by improperly managing retirement assets. MDPCE is
7 working cooperatively with Wolf Pooper, LLP and Keller Rohrback L.L.P. in the
8 management and prosecution of this case.
- 9 • In Re: Bayer Corp. Combination Aspirin Products Marketing And Sales Practices
10 Litigation, No. 09-02023 (BMC) (JMA) (E.D.N.Y.). Nationwide consumer fraud
11 class action alleging that Bayer Healthcare LLC's deceptive practices misled
12 consumers in connection with the marketing of "Bayer Women's Low Dose +
13 Calcium" and "Bayer Aspirin With Heart Advantage." MDPCE was been
14 appointed to the Plaintiffs' Steering Committee responsible for prosecuting the
15 litigation.
- 16 • Albert v. Fletcher, (Cal. Super. Ct. Los Angeles Cty.). Nationwide class action
17 alleging that Defendants engaged in self-dealing and breached their fiduciary duty
18 to Plaintiffs. Judge Marvin Lager made specific note of counsel's "top notch"
19 work and "superior" level of advocacy. Jerome Noll was co-lead counsel for the
20 Class and served on the Executive Committee.
- 21 • In re: Window Rock Enter. Inc. 05-bk-5004 (RK) (Bankr. C.D. Cal.). During
22 the pendency of the Breedlove class action, defendant Window Rock filed for
23 bankruptcy protection. MDPCE was appointed to the Official Creditors
24 Committee and was further appointed Vice Chair of that committee. Through
25 MDPCE's efforts, a consensual plan of reorganization was reached.

26 11. In fact, MDPCE attorneys have a long history of working cooperatively with other
27 law firms in class actions. Ms. Coll has worked collaboratively with Calvo & Clark attorneys in
28 prior litigation, and MDPCE is prepared to coordinated its efforts with Calvo & Clark in the

1 present actions to ensure that the matters are prosecuted efficiently. Both firms are prepared to
2 devote the necessary resources to achieve the best results for the class. MDPCE believes that the
3 appointment of both MDPCE and Calvo & Clark as co-lead counsel will result in the efficient and
4 effective resolution of these matters. Moreover, both MDPCE and Calvo & Clark are committed
5 to ensuring that all qualified firms representing potential class members have an opportunity to
6 participate in the prosecution of this matter.

7 12. In addition to the cooperative relationship between MDPCE and Calvo & Clark, I
8 have worked cooperatively in the past with counsel for the Densmore plaintiffs, Finkelstein
9 Thompson. I spoke to Rosemary Rivas of Finkelstein Thompson in connection with this action
10 and assured her that Finkelstein Thompson would have every opportunity to perform a substantial,
11 meaningful role in this litigation. In fact, our two firms have worked cooperatively in the past on
12 other coordinated litigations (e.g. In re: Ticketmaster Sales Practices, In re: Lending Tree, etc) and
13 I assured her that I anticipated we would undertake a coordinated approach towards the litigation
14 and would actively support her firm's participation in the litigation. In short, I gave her my
15 personal assurance that her Firm would be actively involved in the litigation and explained that our
16 filing for interim co-leadership was a reflection of the extensive investigation we had made pre-
17 suit, the relationship we enjoy with Calvo & Clark, and the fact that we were the first filed action.
18 Moreover, my office and Calvo & Clark have already spoken with local counsel for the Baker
19 plaintiffs, as well as additional counsel for the Baker plaintiffs, who are seeking admission *pro hac*
20 *vice*. MDPCE is committed to establishing and maintaining professional and courteous
21 relationships among counsel in consolidated class actions. I believe that doing so is always in the
22 best interest of the Class.

23 **MDPCE ATTORNEYS HAVE SUBSTANTIAL EXPERIENCE**
24 **PROSECUTING CLASS ACTIONS IN CALIFORNIA COURTS**

25 13. As noted above, MDPCE attorneys have litigated numerous class actions in state
26 and federal courts in California, including Duronslet v. TransWord Sys., Inc., Berenblatt v. Apple,
27 Inc., Wilson v. Gateway, Inc., Create-A-Card v. Intuit, In re: TicketMaster Sales Practices Litig.,
28

1 and Albert v. Fletcher. In addition, MDPCE is currently litigating Thompson v. Automobile Club
2 of Southern California, No. 30-2009 00285190 (Cal. Super. Ct. Orange County), a proposed class
3 action brought on behalf of all members of the Automobile Club of Southern California who paid
4 to renew their annual membership but received less than a full annual membership in return.

5 14. Breedlove provides another example of MDPCE's experience litigating class
6 actions in California Courts. There, MDPCE commenced a consumer fraud class action in Orange
7 County Superior Court in July 2004, to redress the fraudulent, deceptive and improper marketing
8 and advertising claims made by defendants in support of the purported weight loss supplement
9 "CortiSlim." After aggressively litigating the action in the Complex Civil Litigation Department,
10 MDPCE achieved a nationwide recovery for the class.

11 15. In approving an award of \$1 million in attorneys' fees in the Breedlove action, the
12 Superior Court in Orange County praised MDPCE's work as class counsel:

13 An award of \$1,000,000.00 is appropriate in this case in light of the
14 substantial benefit conferred on the Settlement Class Members; the risks
15 undertaken; the quality and extent of the services performed by Class
16 Counsel; the duration and extent of the litigation; the complex issues
17 presented; the fact that Class Counsel took this case on an entirely
18 contingent basis and assumed all litigation expenses; the lengthy and
19 numerous settlement negotiations conducted by Class Counsel; and the
20 fact that there were no objections to the Agreement or to Class Counsel's
21 request for attorneys' fees and expenses.

22
23 **MDPCE HAS THE ABILITY AND WILLINGNESS TO COMMIT**
24 **SUBSTANTIAL RESOURCES TO THIS CASE**

25 16. MDPCE is ready and able to commit substantial resources to this action. The firm
26 has already devoted substantial resources extensively investigating this matter, including the
27 review of Sony's marketing materials, website materials, public statements, and other publicly
28 available materials and communications. The firm also researched and analyzed appropriate

1 claims to bring based on Sony's wrongful conduct. After thorough investigation and research,
2 MDPCE was the first law firm to file an action against Sony, and included in its Complaint
3 detailed allegations relating to Sony's marketing strategy and wrongful after-market modification
4 of the PS3's capabilities.

5 17. The firm is prepared to continue to devote the time and attention of its senior
6 attorneys to litigating this matter thoroughly and efficiently, and its staff to assist in keeping the
7 case running smoothly. For example, in just the past three weeks since this case has been filed,
8 this firm has fielded hundreds of telephone calls and email messages from putative class members
9 concerning (i) the nature of the allegations contained in the Complaint, (ii) how they may
10 participate in the lawsuit, and (iii) offering additional information concerning the impact of Sony's
11 actions. MDPCE has an infrastructure in place that is fully capable of managing large class
12 actions, and its systems are honed to effectively communicate with class members.

13 18. This firm is also well equipped and financially able to manage and organize large
14 scale document productions. The firm's attorneys are experienced with working with all of the
15 most commonly used document and record management electronic databases, including
16 iCONNECT, Summation, Concordance, and LiveNote. The firm is a well-established professional
17 corporation that has existed for 30 years, and has the financial resources to fund this class action
18 just as it has funded previous class actions.

19 19. MDPCE's attorneys thus have the requisite knowledge of the substantive and
20 procedural law to prosecute this class action. MDPCE has committed its resources to the vigorous
21 litigation of this case, has identified appropriate claims, and is prepared to aggressively pursue
22 discovery to establish the evidence necessary to obtain class certification and to prevail on the
23 merits.

24 20. Attached hereto as Exhibit 1, for the Court's convenience, is a true and correct copy
25 of the complaint filed in this matter.

26 21. Attached hereto as Exhibit 2 is a true and correct copy of the complaint filed in
27 Wright v. Sony Computer Entertainment America, Inc., et al., Northern District of California Case
28 Number 3:10-CV-01975-JL.

1 22. Attached hereto as Exhibit 3 is a true and correct copy of the complaint filed in
2 Baker v. Sony Computer Entertainment America, LLC, Northern District of California Case
3 Number 3:10-CV-01897-SC.

4 23. Attached hereto as Exhibit 4 is a true and correct copy of the complaint filed in
5 Densmore v. Sony Computer Entertainment America, Inc., Northern District of California Case
6 Number 3:10-CV-01945-EDL.

7 24. Attached hereto as Exhibit 5 is a true and correct copy of the Notice of Related
8 Cases filed in the Wright matter.

9 25. Attached hereto as Exhibit 6 is a true and correct copy of the Notice of Related
10 Cases filed by the Baker plaintiffs.

11 26. Attached hereto as Exhibit 7 is a true and correct copy of applicable excerpts from
12 the *Annotated Manual for Complex Litigation* (4th ed. 2008).

13 I declare under penalty of perjury of the Laws of the United States that the forgoing is true
14 and correct.

15
16 Executed on May 20, 2010 in New York, New York.

17
18 /s/ Jeffrey I. Carton
Jeffrey I. Carton

19
20 **ATTESTATION OF E-FILED SIGNATURE**

21 I, Rebecca M. Coll, am the ECF User whose ID and password are being used to file the
22 Certificate of Service. In compliance with General Order 45, X.B., I hereby attest that Jeffrey I.
23 Carton has read and approved this Declaration of Jeffrey I. Carton and consents to its filing in this
24 action.

25 Dated: May 20, 2010

MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C.

26
27 /s/ Rebecca M. Coll
Rebecca M. Coll

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