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and Paul Vannatta

8
 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

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

13 Plaintiff,

14 vs.

15 SONY COMPUTER ENTERTAINMENT
 16 AMERICA, INC.,

17 Defendant.

No. 10-CV-1811-RS

CLASS ACTION

**NOTICE OF MOTION AND MOTION TO
 1) CONSOLIDATE CASES AND
 2) APPOINT JOHN R. FABRY OF
 BAILEY & GALYEN AS INTERIM
 CLASS COUNSEL; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

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

The Honorable Richard Seeborg

[Filed concurrently with the Declaration of
 John R. Fabry]

23 **This document also relates to:**

24 TODD DENSMORE and ANTAL HERZ, on
 behalf of themselves and all others similarly
 25 situated,

26 Plaintiffs,

27 vs.

No. 10-CV-1945-EDL

The Honorable Elizabeth D. Laporte

28 **CLASS ACTION - NOTICE OF MOTION AND MOTION TO CONSOLIDATE CASES AND APPOINT
 JOHN R. FABRY OF BAILEY & GALYEN AS INTERIM CLASS COUNSEL; MEMORANDUM OF
 POINTS AND AUTHORITIES IN SUPPORT THEREOF**

1 SONY COMPUTER ENTERTAINMENT
2 AMERICA, INC., a Delaware corporation,

3 Defendant.

4 **This document also relates to:**

5 JASON BAKER, SEAN BOSQUETT,
6 FRANK BACHMAN, PAUL GRAHAM, and
7 PAUL VANNATTA, Individually and on
8 Behalf of All Others Similarly Situated,

9 Plaintiffs,

10 vs.

11 SONY COMPUTER ENTERTAINMENT
12 AMERICA, LLC successor to SONY
13 COMPUTER ENTERTAINMENT
14 AMERICA, INC.

15 Defendant.

16 **This document also relates to:**

17 KEITH WRIGHT, on behalf of himself and all
18 others similarly situated,

19 Plaintiff,

20 vs.

21 SONY COMPUTER ENTERTAINMENT
22 AMERICA, INC.; and SONY COMPUTER
23 ENTERTAINMENT AMERICA, LLC,

24 Defendants.

No. 10-CV-1897-SC

The Honorable Samuel Conti

No. 10-CV-1975-JL

The Honorable James Larson

25 **NOTICE OF MOTION AND MOTION**

26 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD** in the matters of *Ventura*
27 *v. Sony Computer Entertainment America, Inc.*, 10-CV-1811-RS; *Densmore, et al. v. Sony Computer*
28 *Entertainment America, Inc.*, 10-CV-1945-EDL; *Baker, et al. v. Sony Computer Entertainment*
America, LLC successor to Sony Computer Entertainment America, Inc., 10-CV-1897-SC and
Wright v. Sony Computer Entertainment America, Inc., et al., No. 10-CV-1975-JL.

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1 **III. CLASS COUNSEL**

2 FED.R.CIV.P. 23(g)(1) directs the court to appoint class counsel who will “fairly and
3 adequately represent the interests of the class.” The rule further states that the court should consider
4 four factors in appointing counsel. Those factors are:

- 5
- 6 • The work counsel has done in identifying or investigating potential
7 claims in the action, 23(g)(1)(A)(i);
 - 8 • Counsel’s experience in handling class actions, other complex
9 litigation and claims of the type asserted in the action, 23(g)(1)(A)(ii);
 - 10 • Counsel’s knowledge of the applicable law, 23(g)(1)(A)(iii); and
 - 11 • The resources counsel will commit to representing the class.
12 FED.R.CIV.P.23(g)(1)(A)(iv). See also; *In Re: Elec. Data Sys. Corp.
13 Sec. Litig.*, 2256 F.R.D. 559, 571 (E.D. Tex. 2005) *aff’d Federal
14 Data Sys. Corp.*, 429 F.3d 125 (5th Cir. 2005).

15 As the court noted in *Coleman v. General Motors Acceptance Corp.*, 2220 F.R.D. 64, 100
16 (M.D. Tenn. 2004), “the primary responsibility of the class counsel, resulting from an appointment
17 as such, is to represent the best interests of the class.”

18 **A. WORK DONE**

19 BAILEY & GALYEN has devoted substantial time to investigating and identifying the potential
20 claims against Sony. BAILEY & GALYEN’S investigation began April 4, 2010 in response to PS3
21 consumer requests for help regarding Sony’s actions to cripple PS3 functionality. After talking with
22 numerous PS3 owners and investigating their claims, the *Baker* suit was filed on April 30, 2010.
23 Since filing suit, BAILEY & GALYEN has received additional inquiries and continued to gather
24 information supporting Plaintiffs’ claims. (“Fabry Decl.”), ¶8.

25 **B. EXPERIENCE**

26 John R. Fabry has been active in complex mass action litigation and trial practice since 1989.
27 John R. Fabry has represented thousands of plaintiffs in litigation to recover for asbestos injuries
28 caused by defective products and under the Federal Employers’ Liability Act, noise-induced hearing
loss under the Federal Employers’ Liability Act, silicosis caused by defective products, claims for

1 mercury related injuries in the U.S. Court of Federal Claims Omnibus Autism Proceeding, and
2 injuries caused by defective prescription drugs such as Baycol and Fen-Phen. John R. Fabry has
3 been active in class action litigation since 2007. (“Fabry Decl.”), ¶3, 4, 5.

4 **C. KNOWLEDGE OF THE APPLICABLE LAW**

5 BAILEY & GALYEN, in conjunction with local San Francisco counsel Charles S. Bishop of
6 CONNOR & BISHOP, are competent to accomplish all lawyer related functions in this action. These
7 counsel have been working together since early 2007 on the class action *Michael Ewert, on Behalf*
8 *of Himself and All Others Similarly Situated v. eBay, Inc.*, No. 07-CV-2198-RMW, U.S.D.C.
9 Northern District of California, San Jose Division. This action involves alleged violations of the
10 same California consumer protection statutes raised in *Ewert* and the coordinated case *The Missing*
11 *Link, Inc. d/b/a Bath Plus Inc. and Jeffrey Marks, individually and on behalf of all others similarly*
12 *situated v. eBay, Inc.*, No. 07-CV-4487-RMW, U.S.D.C. Northern District of California, San Jose
13 Division. (“Fabry Decl.”), ¶6.

14 **D. COMMITMENT OF RESOURCES IN REPRESENTING THE CLASS**

15 The firm of BAILEY & GALYEN has the necessary staff and financial resources to prosecute
16 the action for the proposed class. The law firm commits to meet the requirements as the action may
17 demand through this Court and appellate levels, if necessary. (“Fabry Decl.”), ¶7-8.

18 Wherefore, counsel respectfully applies to this Court for its order consolidated *Ventura,*
19 *Densmore, Baker and Wright* and appointing John R. Fabry as class counsel in the instant action.

20 Dated: May 20, 2010

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Respectfully submitted,

CONNOR & BISHOP

By: /s/Charles S. Bishop

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1 **UNITED STATE DISTRICT COURT; NORTHERN DISTRICT OF CALIFORNIA**
2 **Case Name: Ventura v. Sony Computer Entertainment**
3 **Case Number: CV 10-1811 EMC**

4 **CERTIFICATE OF SERVICE**

5 I am a citizen of the United States and a resident of the State of California. I am employed
6 in San Francisco County, State of California, in the office of a member of the bar of this Court, at
7 whose direction the service was made. I am over the age of eighteen years, and not a party to the
8 within action. My business address is 44 Montgomery Street, Suite 1750, San Francisco,
9 California 94104.

10 I hereby certify that on May 20, 2010, I electronically filed the following documents with
11 the Clerk of Court using the CM/ECF system:

- 12 ● NOTICE OF MOTION AND MOTION TO 1) CONSOLIDATE CASES AND
13 2) APPOINT JOHN R. FABRY OF BAILEY & GALYEN AS INTERIM CLASS
14 COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN
15 SUPPORT THEREOF

16 United States District Court, Northern District of California CM/ECF system will send
17 notification of such filing to the following attorneys of record at the following listed email
18 addresses:

19 Rebecca Coll 20 Meiselman, Denlea, Packman, Carton & 21 Eberz 22 1311 Mamaroneck Avenue 23 White Planes, New York 10605	rcoll@mdpcelaw.com
24 Deborah McCrimmon 25 DLA PIPER LLP (US) 26 555 Mission Street, Suite 2400 27 San Francisco, CA 94105	deborah.mccrimmon@dlapiper.com, tee.thomas@dlapiper.com
28 Rosemary M. Rivas Mark Punzalan Tracy Tien FINKELSTEIN THOMPSON LLP 100 Bush Street, Suite 1450 San Francisco, CA 94104	ttien@finkelsteinthompson.com, jdito@finkelsteinthompson.com, mpunzalan@finkelsteinthompson.com, rrivas@finkelsteinthompson.com, srenwick@finkelsteinthompson.com

I declare under penalty of perjury under the laws of the United States that all of the foregoing statements are true and correct and if called upon would testify competently thereto. Executed on May 20, 2010, at San Francisco, California


Katy Satorius

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