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**SONY COMPUTER**  
**ENTERTAINMENT AMERICA LLC**

16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

21 In re SONY PS3 "OTHER OS"  
22 LITIGATION

CASE NO. 3:10-CV-01811

**JOINT CASE MANAGEMENT  
STATEMENT AND RULE 26(f) REPORT**

23  
24 Date: September 2, 2010  
Time: 10:00 a.m.  
25 Judge: Hon. Richard Seeborg  
Courtroom: 3

1 Pursuant to Federal Rule of Civil Procedure (“Rule”) 26(f), Civil Local Rule 16, the  
2 Standing Order For All Judges Of The Northern District Of California Re Contents Of Joint Case  
3 Management Statement, and this Court’s Standing Order Re: Initial Case Management, the  
4 parties to the above-captioned consolidated class actions hereby file their Joint Case Management  
5 Statement.

6 **1. Date Case Was Filed.**

7 The seven consolidated actions in this matter were filed between the dates of April 27,  
8 2010 and June 14, 2010. This Court consolidated the actions on June 30, 2010, and Plaintiffs  
9 filed a Consolidated Class Action Complaint (“Consolidated Complaint”) on July 30, 2010. Sony  
10 Computer Entertainment America, LLC was due to respond to the Complaint on August 30, 2010  
11 and has sought an extension, which Plaintiffs do not oppose, until September 10, 2010.

12 **2. List of All Parties.**

13 The named plaintiffs in the Consolidated Complaint are Anthony Ventura, Jonathan  
14 Huber, Antal Herz, Jason Baker, and Elton Stovell, on behalf of themselves and all others  
15 similarly situated. The other named plaintiffs in the seven consolidated actions are Sean  
16 Bosquett, Frank Bachman, Paul Graham, Paul Vannatta, Rick Benavides, Todd Densmore,  
17 Jeffrey Harper, and Zachary Kummer.

18 Defendant is Sony Computer Entertainment America, LLC.

19 **3. Jurisdiction and Service.**

20 Plaintiffs assert that the Court has jurisdiction over this matter pursuant to 28 U.S.C.  
21 section 1332(d)(2) of the Class Action Fairness Act. Defendant Sony Computer Entertainment  
22 America LLC (“SCEA”) does not contest jurisdiction. All named defendants have been served.  
23 There are no counter-claims, cross-claims, or third party claims.

24 **4. Brief Statement of the Facts & Legal Issues.**

25 The above-captioned matter is the result of the consolidation of seven class actions  
26 regarding the PlayStation®3(“PS3”).

27 a. Plaintiffs’ Position

28 Beginning in 2006 when it first introduced the PS3, SCEA promoted the PS3’s unique

1 “Other OS” feature, as one of the product’s core functions which enabled users to install Linux or  
2 other operating systems on the PS3, and thereby use the PS3 as a personal computer. For  
3 example, PS3 users who downloaded Linux could browse the Internet, install media unsupported  
4 by the PS3’s native operating system, and make their own computer programs. SCEA also  
5 advertised other features of the PS3, including its ability to play Blu-ray discs, and its access to  
6 the online service called the PlayStation Network (“PSN”). The PSN allows users to play games  
7 online with friends, access the PlayStation Store, and other services.

8 On or about April 1, 2010, SCEA released a software update (Firmware Update 3.21),  
9 which if downloaded by a PS3 user, intentionally disabled the Other OS function. PS3 owners  
10 who installed this software update lost all access to the Other OS feature, lost the use of all  
11 peripheral devices they purchased for use with the Other OS function, and were effectively locked  
12 out from accessing a substantial portion of the memory on their PS3s’ internal hard drive, as well  
13 as any information and data that users installed on that portion of the hard drive. Alternatively,  
14 those PS3 owners who did not install this software update so that they could retain use of the  
15 “Other OS” feature could no longer access many of their PS3s’ other important functions, such as  
16 the PSN, online games and any money in their PSN wallets; their online subscriptions such as  
17 Netflix; the ability to play certain PS3 games and/or Blu-ray discs; playback of videos stored on a  
18 media server; and the use of other new features and improvements.

19 Based on these allegations, Plaintiffs assert claims for (1) Breach of Express Warranty; (2)  
20 Breach of Implied Warranty of Merchantability; (3) Breach of Implied Warranty of Fitness for a  
21 Particular Purpose; (4) Violation of the California Consumer Legal Remedies Act; (5) Violation  
22 of the Computer Fraud and Abuse Act; (6) Violation of the Magnuson-Moss Warranty Act; (7)  
23 Violation of California’s False Advertising Law; (8) Violation of California’s Unfair Competition  
24 Law; (9) Conversion; and (10) Unjust Enrichment. Pursuant to these claims, Plaintiffs seek  
25 injunctive relief; compensatory, consequential, punitive, and statutory damages; restitution and  
26 restitutionary disgorgement; interest; and attorney’s fees and costs.

27 b. Defendant’s Position

28 SCEA asserts that it issued Firmware Update 3.21 in full compliance with the controlling

1 terms of its System Software License Agreement and Terms of Use. In addition, SCEA fully  
2 performed all terms of any and all express and implied warranties, and thus complied with all  
3 federal and California consumer protection statutes, including, but not limited to, California's  
4 Unfair Competition Law, the Consumer Legal Remedies Act, and the Magnuson-Moss Warranty  
5 Act. SCEA asserts that it has no liability under any claim asserted by Plaintiffs, and that  
6 Plaintiffs have sustained no compensable damages.

7 **5. Motions.**

8 Plaintiffs anticipate filing a motion for class certification and a motion for partial  
9 summary judgment. SCEA anticipates filing a pleading challenge to the Consolidated Complaint,  
10 a motion for summary judgment and/or a motion to determine that the asserted claims cannot  
11 proceed as a class action.

12 **6. Amendment of Pleadings.**

13 Plaintiffs filed the Consolidated Complaint on July 30, 2010. Plaintiffs have proposed a  
14 date for any additional amendments in Section 18 below.

15 **7. Evidence Preservation.**

16 The parties have discussed and agreed to preserve documents and electronic data relevant  
17 to the issues in this case. However, the parties have also identified an issue regarding the extent  
18 of Plaintiffs' obligation to preserve their PS3 consoles. Specifically, SCEA disputes Plaintiffs'  
19 position that they may continue to use their PS3s during the pendency of this litigation. SCEA  
20 believes that these PS3s must be preserved, including barring any continued use, as these units are  
21 evidence.

22 Plaintiffs assert that the requirement that they preserve evidence does not trigger a duty to  
23 stop using their PS3s, and Plaintiffs should be permitted to continue to use those functions that  
24 they can still access on the PS3s, if they so choose. There is no material fact in dispute that an  
25 examination of their PS3s would be relevant to, as there is no dispute regarding the impact of  
26 Update 3.21 upon the PS3. Even verification of the use of Linux is not relevant to the merits of  
27 this action. The proposed class in this case is composed of all purchasers of the PS3 regardless of  
28 whether they had downloaded Linux or not. SCEA deprived those users who had not

1 downloaded Linux of doing so, even though SCEA represented that such a feature was available,  
2 depriving consumers of the ability to do so, and thereby unlawfully injuring purchasers as alleged  
3 in the Consolidated Complaint.

4 Plaintiffs further assert that Plaintiffs' privacy rights would be violated if compelled to  
5 produce their PS3s, which contain private information.

6 Finally, forcing Plaintiffs to stop using their PS3s would cause those who have not  
7 downloaded Update 3.21, and who use the PS3 as a computer, to purchase Linux-compatible  
8 computers and/or additional equipment to take the place of their PS3s. Those who have  
9 downloaded Update 3.21 would lose the ability to play games and would have to purchase an  
10 additional video game console, unless SCEA will provide one for free. Forcing Plaintiffs who  
11 would otherwise use the PS3 for its remaining functions to stop using them unnecessarily would  
12 cause them to incur additional damages in this litigation and will be unfair and prejudicial. The  
13 parties have agreed that they will meet and confer to discuss this issue further.

14 **8. Disclosures.**

15 The parties have agreed to exchange initial disclosures on or before September 20, 2010.

16 **9. Discovery.**

17 To date, the parties have not taken any discovery. The parties have, however, identified  
18 issues regarding the scope of discovery as well as the number of discovery requests each party  
19 shall be entitled to serve. The parties have agreed to proceed with discovery, notwithstanding any  
20 Motions to Dismiss, limited by the number of requests permitted by the Federal Rules, and to  
21 meet and confer and return to the Court if they conclude that further written discovery is  
22 necessary. In addition, the parties have discussed depositions of the Plaintiffs named in the  
23 Consolidated Complaint, and have agreed to endeavor to schedule them on back-to-back days  
24 during the same week, or consecutive weeks. However, at this time Plaintiffs cannot guarantee  
25 this scheduling can be accommodated. SCEA contends it is entitled to depose all named  
26 plaintiffs in each of the consolidated actions. Plaintiffs disagree.

27 Rather than seeking to bifurcate discovery prior to a hearing on class certification on  
28 merits versus certification issues, the parties have agreed that they may each serve any discovery

1 the propounding party deems appropriate. Should the responding party perceive any discovery  
2 propounded prior to certification to be unrelated to certification issues, the parties will meet and  
3 confer about such discovery request and raise any remaining disputes with the Court per its  
4 discovery rules.

5 Plaintiffs contend that one issue that may affect the scheduling in this case is discovery of  
6 Sony Computer Entertainment, which Plaintiffs allege is SCEA's parent company involved with  
7 the decision to issue Firmware Update 3.21, which is located in Japan. If Defendant does not  
8 facilitate such discovery and/or the Court does not compel such production, Plaintiffs may have to  
9 comply with the procedures for international discovery, which Plaintiffs contend may delay the  
10 proceedings in this case.

11 Finally, the parties plan to schedule a meet and confer to discuss electronically stored  
12 information and are currently drafting a stipulated protective order, based on this District's  
13 template stipulated order, to govern the production, use, and disclosure of trade secret and other  
14 commercially sensitive information. The parties also plan to address the scope of appropriate  
15 expert discovery.

16 **10. Class Actions.**

17 Pursuant to Fed. R. Civ. P. 23, Plaintiffs, who each purchased a PS3 in the United States  
18 or its territories, seek certification of a class defined as:

19 All persons who purchased, in the United States and its territories, a new PS3 with  
20 the Open Platform feature for personal use and not for resale and continued to  
own the PS3 on March 27, 2010.

21 SCEA disputes that any class, including Plaintiffs' proposed class, satisfies the  
22 requirements of Fed. R. Civ. P. 23.

23 **11. Related Actions.**

24 The following matter is related to this consolidated action: *James Allee v. Sony Computer*  
25 *Entertainment America, Inc.*, State of Wisconsin Circuit Court for the County of Milwaukee  
26 (Case No. 10CV012458). The *Allee* complaint is brought on behalf of residents of Wisconsin.

27 **12. Relief Sought.**

28 Plaintiffs pray for injunctive relief; compensatory, consequential, punitive, and statutory

1 damages; restitution and restitutionary disgorgement; interest; and attorney's fees and costs.

2 **13. Settlement and ADR.**

3 The parties agree that the best alternative dispute resolution procedure for this matter is a  
4 private mediation. Plaintiffs are prepared to attend mediation at this time, or an Early Neutral  
5 Evaluation. SCEA believes it is premature at this time to engage in alternative dispute resolution,  
6 and mediation would be more fruitful after SCEA has filed its response to Plaintiffs'  
7 Consolidated Complaint, including any pleading challenges it may file, and some initial discovery  
8 has been conducted.

9 **14. Consent to Magistrate Judge for all Purposes.**

10 SCEA has declined to proceed before a Magistrate Judge for all purposes.

11 **15. Other References.**

12 This matter is not suitable for reference to binding arbitration, a special master, or the  
13 Judicial Panel on Multidistrict Litigation.

14 **16. Narrowing of Issues.**

15 The parties have not agreed upon any narrowing of the issues at this time. SCEA  
16 anticipates that it will file a pleading challenge to the Consolidated Complaint which it believes  
17 may result in dismissal of Plaintiffs' claims or a narrowing of the issues. Plaintiffs anticipate  
18 filing a motion for partial summary judgment after discovery has commenced which they believe  
19 may establish liability.

20 **17. Expedited Schedule.**

21 The parties do not believe than an expedited schedule is appropriate.

22 **18. Scheduling.**

23 The parties propose the following schedule for proceedings leading up to and including  
24 class certification and trial:  
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	Plaintiffs' Proposal	SCEA's Proposal
Conclusion of non-expert discovery	<i>[April 29, 2011, see below]</i>	January 31, 2011
Last date to amend pleadings	February 28, 2011	Plaintiffs have no current right to amend and may do so only with leave of court. See Fed. R. Civ. P. 15.
Last day to file and serve a motion for class certification (or, under SCEA's proposal, motion for order denying class certification; Plaintiffs dispute the propriety of such a motion)	February 28, 2011	February 28, 2011
Last day to depose expert(s) offered in support of motion	March 11, 2011  [Eleven days after filing and service of the motion for class certification]	Eleven days after filing and service of the motion for class certification or motion for order denying class certification
Last day to file and serve an opposition to the motion for class certification (or, under SCEA's proposal, the motion for order denying class certification; Plaintiffs dispute the propriety of such a motion)	March 28, 2011  Twenty-eight days after filing and service of the motion for class certification	Twenty-eight days after the later of (1) filing and service of the motion for class certification or motion for order denying class certification; or (2) completion of the deposition of experts offered in support of such motion
Last day to depose expert(s) offered in support of opposition briefing	April 8, 2011  Eleven days after filing and service of the opposition to the motion for class certification	Eleven days after filing and service of the opposition to the motion for class certification or the motion for order denying class certification

1 2 3 4 5 6 7	Last day to file and serve reply brief in support of the motion for class certification(or, under SCEA's proposal, the motion for order denying class certification; Plaintiffs dispute the propriety of such a motion)	April 25, 2011  Twenty-eight days after filing and service of the opposition to the motion for class certification	Twenty-eight days after the later of (1) filing and service of the opposition to the motion for class certification or the motion for order denying class certification; or (2) completion of the deposition of experts offered in support of such opposition.
8 9 10 11	Last day for hearing regarding class certification	May 17, 2011  (approximately three weeks from filing of reply brief and 80 days from filing of motion)	Not less than 80 days after filing and service of the motion for class certification or motion for order denying class certification
12 13 14 15	Conclusion of non-expert discovery	April 29, 2011	<i>Discovery not related to certification -- Date to be set following Court's order regarding class certification</i>
16 17 18	Designation of Experts/Expert Disclosures (opening)	June 9, 2011	<i>Date to be set following Court's order regarding class certification</i>
19 20 21	Designation of Experts/Expert Disclosures (rebuttal)	July 8, 2011	<i>Date to be set following Court's order regarding class certification</i>
22 23	Expert Discovery Cutoff	August 8, 2011	<i>Date to be set following Court's order regarding class certification</i>
24 25 26	Last date to file Motions for Summary Judgment or Partial Summary Judgment	August 18, 2011	<i>Date to be set following Court's order regarding class certification</i>

1 2 3	Last date to file Oppositions to Motions for Summary Judgment or Partial Summary Judgment	September 15, 2011	<i>Date to be set following Court's order regarding class certification</i>
4 5 6	Last date to file Replies to Motions for Summary Judgment or Partial Summary Judgment	September 29, 2011	<i>Date to be set following Court's order regarding class certification</i>
7 8	Last Day for Hearing on Motions for Summary Judgment or Partial Summary Judgment	Week of October 17, 2011	<i>Date to be set following Court's order regarding class certification</i>
9 10 11	Pretrial Disclosures and Pretrial Conference	November 2011	<i>Date to be set following Court's order regarding class certification</i>
12 13 14	Pretrial Conference	December 2011	<i>Date to be set following Court's order regarding class certification</i>
15 16 17 18 19	Trial commences	January 2012	<i>Date to be set following Court's order regarding class certification, (however, SCEA believes October 2011 would be reasonable given the schedule it has proposed</i>

20 **19. Trial.**

21 The Consolidated Complaint contains a jury demand. The parties believe it is premature  
22 to estimate the length of trial prior to a determination regarding class certification and the size and  
23 scope of any certified class.

24 **20. Disclosure of Non-Party Interested Entities or Parties.**

25 As of April 2010, SCEA's corporate parent is Sony Corporation of America.

26 Plaintiffs have filed their Certificates of Interested Parties indicating that they are unaware  
27 of any person, association, firm, partnership, corporation, or any other entity with an interest in  
28

1 this action.

2 **21. Other Matters That May Facilitate Disposition of this Matter.**

3 None

4  
5 Dated: August 23, 2010

DLA PIPER LLP (US)

6

By: /s/ Luanne Sacks

7

LUANNE SACKS

8

Attorneys for Defendant

SONY COMPUTER ENTERTAINMENT  
AMERICA LLC

9

10 Dated: August 23, 2010

CALVO & CLARK LLP

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By: /s/ James A. Quadra

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JAMES A. QUADRA

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REBECCA COLL

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Interim Co-Lead Counsel and Counsel for

Plaintiffs ANTHONY VENTURA,

JONATHAN HUBER, ANTAL HERZ, JASON

BAKER, and ELTON STOVELL

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16 Dated: August 23, 2010

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21 Dated: August 23, 2010

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Plaintiffs ANTHONY VENTURA,

JONATHAN HUBER, ANTAL HERZ, JASON

BAKER, and ELTON STOVELL

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**ATTESTATION**

I, James A. Quadra, am the ECF user whose ID and password are being used to file this Joint Case Management Statement and Rule 26(f) Report. In compliance with General Order 45, X.B., I hereby attest that Luanne Sacks, Rosemary Rivas, and James Pizzirusso have concurred in this filing.

Dated: August 23, 2010

CALVO & CLARK LLP

By: /s/ James A. Quadra  
JAMES A. QUADRA