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7 Attorneys for Defendant  
8 SONY COMPUTER ENTERTAINMENT  
AMERICA LLC (erroneously sued as "Sony  
Computer Entertainment America Inc.")  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13  
14  
15 In re SONY PS3 "OTHER OS"  
LITIGATION

CASE NO. 3:10-CV-01811 RS (EMC)

16 **DECLARATION OF CARTER OTT IN**  
17 **SUPPORT OF DEFENDANT'S MOTIONS**  
18 **TO DISMISS AND STRIKE**

19 Date: November 4, 2010  
20 Time: 1:30 p.m.  
21 Judge: Hon. Richard Seeborg  
22 Courtroom: 3

1 I, Carter Ott, declare:

2 1. I am an attorney at law duly licensed to practice before the courts of the State of  
3 California, and I am an attorney with the law firm of DLA Piper LLP (US), attorneys of record  
4 for defendant Sony Computer Entertainment America LLC in the above-captioned action. I have  
5 personal knowledge of the matters set forth in this Declaration. If called as a witness, I could and  
6 would competently testify to these matters.

7 2. Attached hereto as Exhibit A is a true and correct copy of the Limited Hardware  
8 Warranty And Liability for the PlayStation®3. I obtained this document on September 9, 2010  
9 from SCEA's website at [us.playstation.com/support/warranties/ps3/](http://us.playstation.com/support/warranties/ps3/).

10 3. Attached hereto as Exhibit B is a true and correct copy of the System Software  
11 License Agreement (Version 1.4) for the PlayStation®3 System. I obtained this document on  
12 September 9, 2010 from the Internet at [www.scei.co.jp/ps3-eula/ps3\\_eula\\_en.html](http://www.scei.co.jp/ps3-eula/ps3_eula_en.html).

13 4. Attached hereto as Exhibit C is a true and correct copy of the System Software  
14 License Agreement for the PlayStation®3 System, Version 1.1. I obtained this document on May  
15 6, 2010 from the Internet at [www.scei.co.jp/ps3-eula/ps3\\_eula\\_en.html](http://www.scei.co.jp/ps3-eula/ps3_eula_en.html), using an Internet archive,  
16 located at [web.archive.org](http://web.archive.org).

17 5. Attached hereto as Exhibit D is a true and correct copy of the System Software  
18 License Agreement (Version 1.3) for the PlayStation®3 System. I obtained this document on  
19 September 9, 2010 from the Internet at [http://nz.playstation.com/ps3/support/system-](http://nz.playstation.com/ps3/support/system-software/detail/item303335/Update-features(ver-3-42)/)  
20 [software/detail/item303335/Update-features\(ver-3-42\)/](http://nz.playstation.com/ps3/support/system-software/detail/item303335/Update-features(ver-3-42)/).

21 6. Attached hereto as Exhibit E is a true and correct copy of the Terms Of Service  
22 And User Agreement for the PlayStation®Network, Version 7.0. I obtained this document on  
23 September 9, 2010 from the Internet at [legaldoc.dl.playstation.net/ps3-](http://legaldoc.dl.playstation.net/ps3-eula/psn/u/u_tosua_en.html)  
24 [eula/psn/u/u\\_tosua\\_en.html](http://legaldoc.dl.playstation.net/ps3-eula/psn/u/u_tosua_en.html).

25 7. Attached hereto as Exhibit F is a true and correct copy of the  
26 PlayStation®Network Terms of Service and User Agreement, Version 2.0. I obtained this  
27 document on May 6, 2010 from the Internet at [www.scei.co.jp/ps3-eula/ps3\\_eula\\_en.html](http://www.scei.co.jp/ps3-eula/ps3_eula_en.html),  
28 using an Internet archive, located at [web.archive.org](http://web.archive.org).

1           8.       Attached hereto as Exhibit G is a true and correct copy of the  
2 PlayStation®Network: Terms of Service and User Agreement, Version 5.00. I obtained this  
3 document on September 9, 2010 from the Internet at [legaldoc.dl.playstation.net/ps3-  
eula/psn/h/h\\_tosua\\_en.html](http://legaldoc.dl.playstation.net/ps3-<br/>4 eula/psn/h/h_tosua_en.html).

5           9.       Attached hereto as Exhibit H is a true and correct copy of a document titled “Open  
6 Platform for PlayStation®3.” I obtained this copy on July 21, 2010 from SCEA’s website at  
7 [www.playstation.com/ps3-openplatform/index.html](http://www.playstation.com/ps3-openplatform/index.html).

8           10.      Attached hereto as Exhibit I is a true and correct copy of the Complaint filed in  
9 this Court on April 30, 2010 in *Baker, et al. v. Sony Computer Entertainment America, LLC*, U.S.  
10 District Court, Northern District of California, Case No. CV-10-01897-RS.

11          11.      Attached hereto as Exhibit J is a true and correct copy of the Complaint filed in  
12 this Court on May 5, 2010 in *Densmore, et al. v. Sony Computer Entertainment America, Inc.*,  
13 U.S. District Court, Northern District of California, Case No. CV-10-1945-RS.

14          12.      Attached hereto as Exhibit K is a true and correct copy of the Complaint filed in  
15 this Court on May 6, 2010 in *Wright v. Sony Computer Entertainment America, Inc., et al.*, U.S.  
16 District Court, Northern District of California, Case No. CV-10-01975-RS.

17          13.      Attached hereto as Exhibit L is a true and correct copy of the Complaint filed in  
18 this Court on May 21, 2010 in *Harper, et al. v. Sony Computer Entertainment America, Inc.*, U.S.  
19 District Court, Northern District of California, Case No. CV-10-02197-RS.

20          14.      Attached hereto as Exhibit M is a true and correct copy of the Complaint filed in  
21 this Court on May 21, 2010 in *Huber v. Sony Computer Entertainment America, LLC*, U.S.  
22 District Court, Northern District of California, Case No. CV-10-02213-RS.

23          15.      Attached hereto as Exhibit N is a true and correct copy of the Complaint filed in  
24 this Court on June 14, 2010 in *Benavides v. Sony Computer Entertainment America, Inc.*, U.S.  
25 District Court, Northern District of California, Case No. CV-10-02612-RS.

26          16.      Attached hereto as Exhibit O is a true and correct copy of the Complaint filed on  
27 July 28, 2010 in *Allee v. Sony Computer Entertainment America Inc.*, State of Wisconsin, Circuit  
28 Court, Milwaukee County, Case No. 10CV012458.

1           17.     Attached hereto as Exhibit P is a true and correct copy of SCEA's Notice of  
2 Removal filed on August 27, 2010 in *Allee v. Sony Computer Entertainment America Inc.*, U.S.  
3 District Court, Eastern District of Wisconsin, Case No. CV-00737-WEC.

4           18.     Attached hereto as Exhibit Q are true and correct copies of excerpts of postings  
5 from Internet webpages cited in Plaintiffs' Consolidated Class Action Complaint. I obtained  
6 these on September 9, 2010 from [http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment/)  
7 [update/comment/](http://blog.us.playstation.com/2010/03/28/ps3-firmware-v3-21-update/comment/).

8           19.     Attached hereto as Exhibit R is a true and correct copy of a document from the  
9 PlayStation® Knowledge Center containing "FAQs." I obtained this document on April 28, 2010  
10 from the Internet at [playstation.custhelp.com/app/answers/print/a\\_id/469](http://playstation.custhelp.com/app/answers/print/a_id/469).

11          20.     Attached hereto as Exhibit S is a true and correct copy of the System Software  
12 License Agreement for the PlayStation®3 System, Version 1.0. I obtained this document on  
13 September 10, 2010 from the Internet at [www.scei.co.jp/ps3-eula/ps3\\_eula\\_en.html](http://www.scei.co.jp/ps3-eula/ps3_eula_en.html) using an  
14 Internet archive, located at [web.archive.org](http://web.archive.org).

15          21.     Attached hereto as Exhibit T is a true and correct copy of the System Software  
16 License Agreement (Version 1.2) for the PlayStation®3 System. I obtained this document on  
17 September 10, 2010 from the Internet at [www.scei.co.jp/ps3-eula/ps3\\_eula\\_en.html](http://www.scei.co.jp/ps3-eula/ps3_eula_en.html) using an  
18 Internet archive, located at [web.archive.org](http://web.archive.org).

19          22.     Attached hereto as Exhibit U is a true and correct copy of the  
20 PlayStation®Network Terms Of Service And User Agreement, Version 1.0. I obtained this  
21 document on September 10, 2010 from the Internet at [www.scei.co.jp/ps3-eula/us\\_psn\\_en.html](http://www.scei.co.jp/ps3-eula/us_psn_en.html)  
22 using an Internet archive, located at [web.archive.org](http://web.archive.org).

23          23.     Attached hereto as Exhibit V is a true and correct copy of the  
24 PlayStation®Network: Terms Of Service And User Agreement, Version 3.0. I obtained this  
25 document on September 10, 2010 from the Internet at [www.scei.co.jp/ps3-](http://www.scei.co.jp/ps3-eula/psn/u/u_tosua_en.html)  
26 [eula/psn/u/u\\_tosua\\_en.html](http://www.scei.co.jp/ps3-eula/psn/u/u_tosua_en.html) using an Internet archive, located at [web.archive.org](http://web.archive.org).

27          24.     Attached hereto as Exhibit W is a true and correct copy of the  
28 PlayStation®Network: Terms Of Service And User Agreement, Version 4.0. I obtained this

1 document on September 10, 2010 from the Internet at www.scei.co.jp/ps3-  
2 eula/psn/u/u\_tosua\_en.html.

3 25. Attached hereto as Exhibit X is a true and correct copy of the Terms Of Service  
4 And User Agreement for the PlayStation®Network, Version 6.0. I obtained this document on  
5 September 10, 2010 from the Internet at [http://us.playstation.com/support/useragreements/  
6 termsservicesagreemnt-apr2010/index.htm](http://us.playstation.com/support/useragreements/termsservicesagreemnt-apr2010/index.htm).

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct. Executed this 10th day of September, 2010, in San Francisco,  
9 California.

10  
11 /s/ Carter Ott  
12 CARTER OTT