

EXHIBIT P

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAMES ALLEE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

Case No. _____

SONY COMPUTER
ENTERTAINMENT AMERICA, INC.,

Defendant.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1332, 1441, and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, defendant Sony Computer Entertainment America LLC (“SCEA”), incorrectly named as Sony Computer Entertainment America Inc., by its counsel, hereby removes to this Court the above-captioned putative class action, pending as Case No. 10CV012458 in the State of Wisconsin Circuit Court for the County of Milwaukee (the “State Court Action”). SCEA believes that all of plaintiff’s claims are without merit, and will dispute them at the appropriate time, but for purposes of removal states as follows:

BASIS FOR FEDERAL JURISDICTION

I. FACTUAL BACKGROUND

1. On or about July 28, 2010, plaintiff James Allee filed a Complaint commencing the State Court Action against SCEA. A copy of the Summons and Complaint are attached hereto as Exhibit 1.

2. According to the Complaint, Mr. Allee is an individual residing in Waukesha County, Wisconsin. Exhibit 1 (Complaint), ¶ 5.

3. SCEA is a Delaware limited liability company with its principal place of business in Foster City, California. Declaration of Carter Ott In Support Of Notice of Removal (“Ott Decl.”), ¶ 2; Exhibit 1 (Complaint), ¶ 6.

4. Mr. Allee served SCEA with the Complaint on July 29, 2010. Ott Decl., ¶ 3.

5. In his Complaint, Mr. Allee purports to allege claims for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Fraudulent Representation and Deceptive Trade Practices in Violation of Wisconsin Statutes section 100.18(1); Breach of Express Warranty pursuant to Wisconsin Statutes section 402.313; Punitive Damages pursuant to Wisconsin Statutes section 895.043; and Unjust Enrichment on behalf of himself and a proposed class defined as “[a]ll Wisconsin residents who purchased a PS3 during the period November 17, 2006 to March 27, 2010, and who did not resell their PS3 before March 27, 2010.” Exhibit 1 (Complaint), ¶¶ 41, 43-77. On behalf of himself and this proposed class, Mr. Allee seeks actual, compensatory, and consequential damages; restitution and disgorgement; injunctive and declaratory relief; punitive damages; and attorneys’ fees and costs. *Id.*, ¶ 2 & Prayer For Relief.

II. GROUNDS FOR REMOVAL

6. Plaintiff’s claims are removable under the Class Action Fairness Act (“CAFA”), which provides this Court with jurisdiction. *See* 28 U.S.C. §§ 1332(d), 1453. CAFA extends federal jurisdiction over class actions where: (1) any member of the proposed class is a citizen of a state different from any defendant (*i.e.*, where minimal diversity exists); (2) the proposed class consists of more than 100 members; and (3) the amount in controversy is \$5 million or more, aggregating all claims and exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B). As shown in further detail below, each of these requirements is met here.

A. Minimal Diversity

7. CAFA requires only minimal diversity, *i.e.* that “any member of a class of plaintiffs is a citizen of a State different from any defendant[.]” 28 U.S.C. § 1332(d)(2)(A).

Here, as explained above, this requirement is not only met, but exceeded, because there is complete diversity of citizenship between Mr. Allee and SCEA. According to the Complaint, Mr. Allee is a citizen of Wisconsin; whereas, SCEA is a citizen of Delaware and California. Minimal diversity is therefore established under CAFA.

B. Number Of Class Members And Amount In Controversy

8. Based on the calculation methods explained below, CAFA's requirements for the number of class members and the amount in controversy are clearly satisfied.

9. **Calculations Based on the Number of Registered PS3 Owners.** Between November 17, 2006 and August 31, 2009 (a portion of the class period), the number of unique PS3's registered on the PlayStation® Network by users with a Wisconsin address was in excess of 50,000. Declaration of Christopher Hagedorn In Support Of Notice of Removal ("Hagedorn Decl."), ¶ 3. This number far exceeds the 100 class members required under CAFA.

10. In his Complaint, Mr. Allee seeks damages "in an amount not less than the purchase price of Sony's PS3 or a portion thereof" Exhibit 1 (Complaint), ¶ 67. Plaintiff elsewhere seeks restitution of "monies or portions thereof that Plaintiff and the Class paid at retail for Sony's PS3" Exhibit 1 (Complaint), Prayer for Relief.¹ Using the number of registered Wisconsin PS3 owners from Paragraph 9 (50,000) and the lowest retail price for the

¹ It is appropriate to determine the aggregate amount in controversy, pursuant to CAFA, based on the maximum amount alleged in the complaint (i.e., the full retail purchase price of the PS3). *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204-06 (E.D. Cal. 2008) ("Because plaintiff alleges in his complaint that defendant is liable for up to \$1000 per violation . . . and because defendant has proffered evidence that it has processed more than 5,000 credit card transactions, [defendant] has demonstrated by a preponderance of the evidence that the amount in controversy exceeds \$5,000,000.") (citing *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448-49 (7th Cir. 2005) (court must look to complaint to determine plaintiff's actual demands; *Meridian Security Ins. Co. v. Sadowski*, 441 F.3d 536, 541 (7th Cir. 2000) ("[O]nce these facts have been established the proponent's estimate of the claim's value must be accepted unless there is 'legal certainty' that the controversy's value is below the threshold."); see also *Ochoa v. Interbrew America, Inc.*, 999 F.2d 626, 629-30 (2d Cir. 1993) (in considering challenges to jurisdictional amount when there is no claim of bad faith, courts are permitted only to assess the allegations of the plaintiff's complaint and are to refrain from adjudicating the merits of the case); *Dreyer v. Jalet*, 349 F. Supp. 452, 465-67 (S.D. Tex. 1972) (absolute certainty in valuation of right involved is not required; reasonable probability of an amount in controversy exceeding jurisdictional amount suffices if amount can be ascertained pursuant to some realistic formula), *affirmed* 479 F.2d 1044; *Miller-Bradford & Risberg, Inc. v. FMC Corp.*, E.D. Wis. 1976, 414 F. Supp. 1147, 1149-50 (E.D. Wis. 1976) (uncertainty of damages is not sufficient to establish that amount in controversy is not in excess of jurisdictional amount).

PS3 between November 17, 2006 and August 31, 2009 (\$299) (*see* Hagedorn Decl., ¶ 3), Mr. Allee is seeking compensatory damages and/or restitution in the maximum amount of at least \$14,950,000 just for these class members. This amount more than satisfies CAFA's \$5 million amount in controversy requirement.²

11. **Calculations Based on the Proportion of United States and Wisconsin Residents.** During the period from November 17, 2006 to August 31, 2009, approximately 8 million PS3s were sold in the United States. Ott Decl., ¶ 4. Wisconsin contains approximately 1.84% percent of the United States population. *Id.*

12. Assuming that Wisconsin residents purchased PS3's in proportion to citizens of other states, there would be approximately 147,000 Wisconsin PS3 owners. This also far exceeds the 100 class member requirement under CAFA.

13. Furthermore, based on the lowest retail price for the PS3 discussed above (\$299) (Hagedorn Decl., ¶ 3) and the estimated number of Wisconsin PS3 owners from Paragraph 12 (147,000), Mr. Allee seeks compensatory damages and/or restitution in the maximum amount of at least \$43,953,000. This also satisfies the amount in controversy requirement.³

II. COMPLIANCE WITH REMOVAL STATUTE

14. **Removal to Proper Court.** This Notice Of Removal is properly filed in this District because the State of Wisconsin Circuit Court for the County of Milwaukee is located in this federal judicial district. *See* 28 U.S.C. § 1441(a).

15. **Proper Signature.** This Notice Of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

16. **Removal is Timely.** This Notice Of Removal is timely under 28 U.S.C. section 1446(b), as it is filed within thirty days of when SCEA was served.

² Based on this method of calculating the size of the class, Mr. Allee also seeks at least \$29,900,000 in punitive damages. *See White v. Playphone, Inc.*, 2009 WL 499103 (W.D. Wis. Feb 27, 2009) (using possible punitive damages award in calculating amount in controversy).

³ Mr. Allee also seeks punitive damages. Exhibit 1 (Complaint), Prayer For Relief. He therefore seeks, at least, \$87,906,000 in punitive damages alone for his proposed class.

17. Pleadings and Process. Pursuant to 28 U.S.C. section 1446(a), a copy of all process, pleadings, and orders served upon SCEA with respect to this action, which papers include the Complaint, are attached. *See* Exhibit 1.

18. Filing and Service. Pursuant to 28 U.S.C. section 1446(d), a copy of this Notice Of Removal is being served upon Mr. Allee's counsel and a copy, along with a Notice Of Filing Of Notice Of Removal, is being filed with the Clerk of the State of Wisconsin Circuit Court for the County of Milwaukee.

19. No Consent Needed. Mr. Allee's consent to federal jurisdiction is not necessary given the basis for jurisdiction is CAFA. *See* 28 U.S.C. § 1453(b) ("A class action may be removed to a district court of the United States in accordance with section 1446....except that such action may be removed by any defendant without the consent of all defendants.").

WHEREFORE, defendant Sony Computer Entertainment America LLC respectfully removes the above-captioned action to the United States District Court for the Eastern District of Wisconsin.

Dated this 27th day of August, 2010.

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