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4 Attorney for Defendant
 5 GEORGE HOTZ

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

11 SONY COMPUTER ENTERTAINMENT
 12 AMERICA LLC, a Delaware limited
 liability company,

13 Plaintiff,

14 v.

15 GEORGE HOTZ; HECTOR MARTIN
 16 CANTERO; SVEN PETER; and DOES 1
 through 100,

17 Defendants.
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CASE No.: 3:11-cv-00167 SI

AFFIDAVIT OF YASHA HEIDARI

Date:

Time:

Courtroom: 10, 19th Floor

Judge: Hon. Susan Illston

1 Personally appeared before me, an officer duly authorized by law to administer oaths,
2 Yasha Heidari, who after first being duly sworn, states:

- 3
- 4 1. My name is Yasha Heidari, and I am of required age and competent in all respects to
5 testify regarding the matter set forth herein. I have personal knowledge of the facts stated
6 herein and know them to be true. I am an attorney duly licensed to practice law in the
7 State of Georgia, and I am a member of the law firm Heidari Power Law Group LLC.
- 8 2. On the date of this affidavit, I successfully updated a Playstation 3 Computer
9 Entertainment System (“Playstation Computer”) I own via a Playstation Computer
10 firmware update.
- 11 3. A firmware update file for the Playstation Computer may be obtained through numerous
12 avenues, including by downloading such firmware update file from websites on the
13 Internet.
- 14 4. Indeed, a firmware update file for the Playstation Computer may even be obtained from
15 Plaintiff’s website. As of the date of this affidavit, Playstation Computer firmware update
16 file for version 3.55 of the firmware, which is the latest firmware update available, may
17 be obtained via the following direct link:
18 <[http://dus01.ps3.update.playstation.net/update/ps3/image/us/2010_1207_ca595ad9f3af8](http://dus01.ps3.update.playstation.net/update/ps3/image/us/2010_1207_ca595ad9f3af8f1491d9c9b6921a8c61/PS3UPDAT.PUP)
19 [f1491d9c9b6921a8c61/PS3UPDAT.PUP](http://dus01.ps3.update.playstation.net/update/ps3/image/us/2010_1207_ca595ad9f3af8f1491d9c9b6921a8c61/PS3UPDAT.PUP)>.
- 20 5. When downloading such Playstation Computer firmware update from Plaintiff’s website
21 via the aforementioned link, no Playstation Network Agreement (“PSN Agreement”) is
22 presented, made available, or required to be accepted in order to download such firmware
23 update. As used herein, the phrase “PSN Agreement” explicitly includes the “Playstation
24 Network Terms of Service and User Agreement”, which is extensively referenced by
25 Plaintiff in this proceeding.
- 26 6. I was able to successfully download the aforementioned Playstation Computer firmware
27 update from Plaintiff’s website via the aforementioned link. After downloading the
28 Playstation Computer firmware update, I was able to transfer such file to a USB device,

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and thereafter, connected my USB device to my Playstation Computer. I was then able to perform a Playstation Computer system update.

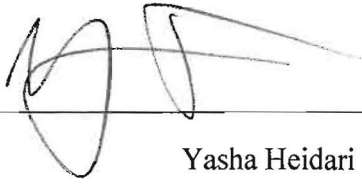
- 7. Instructions for installing a Playstation Computer firmware update via a USB device are widely available on the internet, including on Plaintiff's website.
- 8. When installing the Playstation Computer firmware update, I was prompted to accept a "SYSTEM SOFTWARE LICENSE AGREEMENT (Version 1.4) FOR THE PlayStation®3 SYSTEM" (hereinafter the "Software License Agreement"). Such Software License Agreement is promulgated by Sony Computer Entertainment Inc., and does not reference Plaintiff, Sony Computer Entertainment America LLC. Such Software License Agreement is also dated December 10, 2009. A true and correct copy of such Software License Agreement is hereto attached as Exhibit "A".
- 9. The Software License Agreement does not include a choice of law provision, a choice of forum provision, or a choice of venue provision.
- 10. Accordingly, I was able to successfully update my Playstation Computer via a firmware update without connecting to the Playstation Network ("PSN"). Indeed, I have never accessed the PSN to date.
- 11. I was able to successfully update my Playstation Computer via a firmware update without accepting any PSN Agreement. Indeed, I was never presented with an opportunity to accept a PSN Agreement. To date, I have never accepted nor been presented with an option to accept a PSN Agreement.
- 12. Updating a Playstation Computer via a firmware update does not require access to the PSN, nor does it require accepting a PSN Agreement to install such firmware update.
- 13. I have never agreed to a PSN Agreement, yet I am able to fully utilize and use my Playstation Computer.

1 FURTHER AFFIANT SAYETH NOT.

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Yasha Heidari


5 Subscribed and sworn to before me

6 this 21st day of Jan, 2011.

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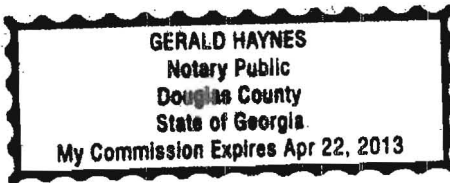


10 Notary Public

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12 [SEAL]

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