

1 STEWART KELLAR, State Bar #267747
E-Attorney at Law™
148 Townsend St., Suite 2
2 San Francisco, CA 94107
Telephone: (415) 742-2303
3 Email: stewart@etrny.com

4 Attorney for Defendant
5 GEORGE HOTZ

6
7
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.
18
19
20
21
22
23
24
25
26
27
28

CASE No.: CV 11-00167 SI

**NOTICE OF MOTION AND MOTION
FOR HEARING ON TEMPORARY
RESTRAINING ORDER**

Date: February 10, 2011

Time: 9:00 a.m.

Courtroom: 10, 19th Floor

Judge: Hon. Susan Illston

1 **NOTICE OF MOTION AND MOTION FOR HEARING ON TEMPORARY**
2 **RESTRAINING ORDER**

3 Without consenting to personal jurisdiction, now comes Mr. George Hotz by and
4 through his attorney of record specially appears and respectfully moves this Court for a Hearing
5 of the Court's January 27, 2011 Order (Dkt. No. 50) granting Plaintiff's ex parte Motion for
6 Temporary Restraining Order ("TRO"). The undersigned bring this motion for hearing because
7 the TRO requires a hearing on the merits of the TRO itself. Accordingly, movant asks the Court
8 to grant this Motion for Hearing and hold a TRO hearing on February 10, 2011.

9 **ARGUMENT**

10 **I. THE TEMPORARY RESTRAINING ORDER WAS ISSUED WITHOUT A**
11 **HEARING ON THE RESTRAINING ORDER ITSELF.**

12 "The entry or continuation of an injunction requires a hearing. Only when the facts are
13 not in dispute, or when the adverse party has waived its right to a hearing, can that significant
14 procedural step be eliminated." *Charlton v. Estate of Charlton*, 841 F2d 988, 989 (9th Cir
15 1988). The Temporary Restraining Order entered requires a hearing. The facts are sharply in
16 dispute and Mr. Hotz has not waived his right to a hearing. That hearing was not had.
17 Although a hearing was held on January 14, 2011, the hearing was limited to the question of
18 personal jurisdiction over Mr. Hotz and neither the merits of the TRO nor its terms were points
19 of discussion. The absence of a hearing on this matter has had the prejudicial effect of
20 preventing Mr. Hotz the right to a hearing on the overbroad and vague nature of the TRO, as
21 discussed below.

22 The January 14 hearing transcript makes it clear that the merits of the TRO were not
23 discussed because the preliminary question of personal jurisdiction was at issue.

24 **THE COURT:** I don't mean continually to be kicking the can down the road
25 . . . I'm not going to decide the TRO question until I have a better handle on
26 the jurisdiction.

27 Hrg. Transcript 4:15-16. Later, the Court indicated that the merits of the TRO itself were not
28 being discussed at the hearing.

1 **CERTIFICATE OF SERVICE**

2 [C.C.P. §§ 1011 and 1013, C.R.C. § 2008, F.R.C.P. Rule 5, F.R.A.P. 25]

3 I declare that I am employed in the City and County of San Francisco, California; I am
4 over the age of 18 years and not a party to the within action; my business address is 148
Townsend Street, Suite 2, San Francisco, CA 94107. On the date set forth below, I served a true
and accurate copy of the document(s) entitled:

- 5 - **MOTION FOR HEARING ON TEMPORARY RESTRAINING ORDER**
6 - **MOTION FOR AN ORDER SHORTENING TIME FOR HEARING MOTION**
7 **FOR HEARING ON TEMPORARY RESTRAINING ORDER**
8 - **DECLARATION OF STEWART KELLAR IN SUPPORT OF MOTION FOR**
9 **AN ORDER SHORTENING TIME FOR HEARING MOTION FOR**
10 **HEARING ON TEMPORARY RESTRAINING ORDER**
11 - **[PROPOSED] ORDER GRANTING MOTION TO SHORTEN TIME**

12 on the party(ies) in this action by placing said copy(ies) in a sealed envelope each
13 addressed as follows:

14 **KILPATRICK TOWNSEND & STOCKTON LLP**
15 **RYAN T. BRICKER.** (State Bar No. 269100)
16 Two Embarcadero Center Eighth Floor
17 San Francisco, CA 94111
18 Telephone: (415) 576-0200
19 Facsimile: (415) 576-0300
20 Email: rbricker@kilpatricktownsend.com
21 Attorney for Plaintiff

- 22 ☒ [By First Class Mail] I am readily familiar with my employer's practice for collecting and
23 processing documents for mailing with the United States Postal Service. On the date
24 listed herein, following ordinary business practice, I served the within document(s) at my
25 place of business, by placing a true copy thereof, enclosed in a sealed envelope, with
26 postage thereon fully prepaid, for collection and mailing with the United States Postal
27 Service where it would be deposited with the United States Postal Service that same day
28 in the ordinary course of business.
- ☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier
service for overnight delivery to the offices of the addressee(s).
- ☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be
delivered by courier this date.
- ☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission
to the fax number indicated for the party(ies) listed above.
- ☒ [By Electronic Transmission] I caused said document to be sent by electronic
transmission to the e-mail address(es) indicated for the party(ies) listed above.

29 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
30 was executed this date at San Francisco, California.

31 Dated: February 8, 2011

_____/s/ Stewart Kellar

Stewart Kellar