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18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 In re SONY PS3 "OTHER OS" LITIGATION

Case No. 4:10-CV-01811-YGR

21 **PLAINTIFFS' NOTICE OF MOTION AND**
22 **RENEWED MOTION FOR PRELIMINARY**
23 **APPROVAL OF CLASS ACTION SETTLEMENT**
24 **AND CERTIFICATION OF SETTLEMENT**
25 **CLASS; MEMORANDUM OF POINTS &**
26 **AUTHORITIES IN SUPPORT THEREOF**

27 Date: October 10, 2017
28 Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 10, 2017¹ at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 1, 4th Floor of the United States District Court, Oakland Courthouse, located at 1301 Clay Street, Oakland, California, 94612, before the Honorable Yvonne Gonzalez Rogers, Plaintiffs Derrick Alba, Jason Baker, James Girardi, Jonathan Huber, and Anthony Ventura, (“Plaintiffs”) will, and hereby do, move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for an order:

1. Preliminarily approving the new Stipulation of Class Action Settlement and Release (“New Settlement” or “New Settlement Agreement”) they have reached with Defendant in this matter on or around August 24, 2017;

2. Granting provisional certification of the Class, and appointing the foregoing named plaintiffs as the class representatives and Kathleen V. Fisher of Calvo Fisher & Jacob LLP; Gordon M. Fauth, Jr. of Finkelstein Thompson LLP; and James Pizzirusso of Hausfeld LLP, as Class Counsel;

3. Approving the Parties’ proposed Notice Program, as set forth in the New Settlement, and directing notice of the proposed Settlement to the Class;

4. Appointing Garden City Group, LLC (“GCG”) as Settlement Administrator to carry out the duties related to settlement administration, including but not limited to sending notice, as set forth in the New Settlement Agreement;

5. Approving the Parties’ proposed Claim Form, and approving the procedures set forth in the New Settlement for Class Members to submit claims, exclude themselves from the Class, and object to the New Settlement;

6. Setting a schedule for the final approval process and for Plaintiffs’ motion for service awards to the named plaintiffs and attorneys’ fees and costs; and

7. Staying all non-settlement related proceedings in this case pending final approval of the

¹ The Parties initially agreed to a Preliminary Approval Hearing date of October 3, 2017. However, due to a scheduling conflict, the Parties now propose a Hearing date of October 10, 2017.

1 proposed New Settlement.

2 The grounds for this motion are that the proposed New Settlement is fair, adequate and
3 reasonable, and that the other requested relief is well-grounded in law and fact, as set forth in the
4 accompanying memorandum of points and authorities. This motion is based on the Declaration of
5 Kathleen V. Fisher submitted herewith, and the exhibits thereto; the Declaration of Stephen Cirami
6 submitted herewith, and the exhibits thereto; the attached supporting memorandum of points and
7 authorities; the pleadings and papers on file in this action, and the oral argument of counsel, if any,
8 presented at the hearing on this motion.

9 DATED: September 1, 2017

Respectfully submitted,

Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Derrick Alba, Jason Baker, James Girardi, Jonathan Huber, and Anthony Ventura, hereby submit this renewed motion for preliminary approval of the new Stipulation of Class Action Settlement and Release (“New Settlement” or “Agreement”)² they reached on or around August 24, 2017 with Defendant Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC (referred to herein as “Defendant” or “SCEA”).

The action arose out of SCEA’s marketing and sale of the Sony PlayStation®3 (“PS3”). Plaintiffs allege that SCEA marketed the PS3 as having the ability to run an operating system in addition to the native game operating system (“Other OS”), and that SCEA subsequently removed the “Other OS” functionality via firmware update 3.21, harming PS3 purchasers. Throughout the pendency of the case, Defendant has denied liability. Defendant has argued that it had the right to remove the Other OS pursuant to its terms of service and other purported agreements, and that the Other OS was not a functionality that was material to the vast majority of purchasers.

After nearly seven years of litigation, a denial of final approval of the initial settlement, a third mediation, and many additional months of negotiations, the parties have entered into the New Settlement Agreement. The New Settlement confers substantially more benefits on the Class compared to the prior settlement (“Prior Settlement”) that the Court rejected in its January 31, 2017 Order Denying Plaintiffs’ Motion for Final Approval of Class Action Settlement Without Prejudice. (Dkt. No. 300 (“Order Denying Final Approval”).) The New Settlement, which was reached with the help of the Honorable James Lambden (Ret.), also addresses each of the Court’s concerns raised in the Order Denying Final Approval.

One of the Court’s chief concerns was that the claims rate was “quite low”: 11,300 claims out of approximately 10 million PS3 units sold. (*Id.* at 7:10-11.) The low claims rate was not the result of any

² Unless otherwise stated, capitalized terms have the same meaning as in the Agreement, attached as Exhibit B to the accompanying Declaration of Kathleen V. Fisher (“Fisher Decl.”).

1 flaw in the notice procedure, which was very successful and reached millions of PS3 users. While the
2 parties believed that the claims rate reflected the fact that the number of purchasers who actually
3 utilized or cared about the Other OS feature was relatively small, the Court concluded that there was
4 not enough evidence in the record to support this contention. (*Id.* 7:12-13.) Instead, the Court
5 determined that the claims process was just too burdensome, given the forms of proof that claimants
6 were required to submit and “the relatively small amount” certain claimants would receive for a valid
7 claim (\$9 or \$55). (*Id.* at 6:17-19.)

8 To address these concerns and improve the claims rate, the claims process in the New
9 Settlement dispenses with any requirement for extrinsic proof. To submit a valid claim, claimants now
10 need only (1) sign the claim form attesting that they used or knew about the Other OS functionality, or
11 believed that they lost value or functionality or were otherwise injured as a result of the firmware
12 update and (2) provide identifying information (their PS3 serial number, PlayStation Network Sign-In
13 ID (email address), *or* their PlayStation Network Online ID). The class definition has been refined to
14 conform to these criteria and it now more accurately reflects the parties to whom compensation is
15 potentially due. As a result, the class size here is much smaller than those who purchased a PS3 unit, as
16 well.

17 The New Settlement also substantially increases the potential recovery for each individual
18 claimant and the Class as a whole. Under the Prior Settlement, SCEA agreed to pay \$55.00 to each
19 Class member who submitted a valid claim showing proof that he or she used the Other OS
20 functionality (Class A), and \$9.00 to all other Class Members who submitted a valid claim attesting that
21 they lost value and/or desired functionality or were otherwise injured as a consequence of the firmware
22 update (Class B). If all claims had been paid under the Prior Settlement, SCEA would have paid
23 approximately \$128,975 to Class A claimants and \$80,730 to Class B claimants.

24 Under the New Settlement, SCEA has agreed to create a Settlement Fund worth \$3.75 million.
25 Assuming the Court grants fees and expenses of \$1.25 million and notice costs of approximately
26 \$300,000 - \$400,000 (depending on the number of claims submitted), then more than \$2 million will be
27 left to claimants - a nearly ten-fold increase in the amount of the payout to the Class. The New
28 Settlement also does not divide the claims of Class Members into different groups or types of claims.

1 Rather, each claimant is entitled to a pro rata share not to exceed \$65 per claimant (subject to a pro rata
2 reduction if the total claims exceeds that amount or, if less than that amount is claimed, the parties may
3 move the Court for an order distributing the remainder of the funds). While the exact dollar amount that
4 Class Members will receive will depend on the number of valid claims that are filed, as well as the
5 amount of certain other payments that are designated to come from the Settlement Fund, this will be a
6 significant improvement over the Prior Settlement.

7 In addition to paying claims, the Settlement Fund will be used to pay the costs of administering
8 the settlement and paying attorney's fees. While the Court previously expressed concern regarding "the
9 disproportionality of the attorneys' fees versus the class recovery," (Order Denying Final Award at
10 1:13-15, 8), the attorneys now are only seeking up to one-third of the Settlement Fund (\$1.25 million) –
11 approximately one-half of what they sought previously. This will mean that the attorneys will receive,
12 at most, pennies on the dollar, given that their collective lodestar and expenses well exceeds \$5 million.
13 The benefit to the Class will be substantially greater than any payment to the attorneys.

14 To ensure a significant claims rate, the parties propose to implement a notice procedure that is
15 similar to the successful procedure used in the Prior Settlement (with email and paid media), but will
16 also include additional internet advertising targeted to reach the greatest number of potential Class
17 Members. Claimants who previously submitted claims will *not* be required to submit new claim forms.
18 Rather, they will automatically be deemed claimants under the New Settlement. This includes claimants
19 whose claims were previously rejected. One of the Court's concerns with the Prior Settlement was that
20 claims were rejected at a high rate. (*See id.* 6:20-22.) This was due to claimants' insufficient extrinsic
21 proof. Since such extrinsic proof is no longer required, this will no longer pose an obstacle to payment
22 of such claims and will increase the claims rate.

23 In sum, by creating a fund, eliminating the proof requirements, and raising the potential payout
24 per claim, the parties are optimistic that a substantial number of new claims will be submitted. By re-
25 structuring the settlement based on the Court's concerns, the parties have also guaranteed that the
26 benefit to the Class as a whole under the New Settlement will be many times higher than under the
27 Prior Settlement. The Parties believe the terms of the New Settlement are fair, reasonable and adequate,
28 and respectfully request that the Court grant this motion.

1 **II. BACKGROUND AND PROCEDURAL SUMMARY**

2 **A. The Consolidated Action**

3 Various plaintiffs filed several class action cases against SCEA arising out of the PS3's "Other
4 OS" functionality beginning on April 27, 2010.³ The Honorable Richard Seeborg consolidated the
5 cases as *In re Sony PS3 "Other OS" Litigation* and appointed the firms of Finkelstein Thompson LLP,
6 Hausfeld LLP and Calvo & Clark LLP (now Calvo Fisher & Jacob LLP) as Interim Co-Lead Counsel.
7 (Dkt. No. 65.)

8 Plaintiffs filed the Consolidated Class Action Complaint ("Consolidated Complaint") on July
9 30, 2010, alleging causes of action for statutory violations of the Unfair Competition Law, Cal. Bus. &
10 Prof. Code § 17200, *et seq.* ("UCL"); the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et*
11 *seq.* ("CLRA"); the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"); the
12 Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*; and the Magnuson-Moss Warranty Act, 15
13 U.S.C. § 2301, *et seq.* (*See* Dkt. No. 76.) Plaintiffs also alleged common law claims for breach of
14 express warranty; breach of the implied warranty of merchantability; breach of the implied warranty of
15 fitness for a particular purpose; conversion and unjust enrichment. *Id.* Plaintiffs sought damages,
16 restitution and injunctive relief. *Id.*

17 **B. SCEA's Challenges to the Pleadings and Subsequent Appeal**

18 On September 10, 2010, SCEA moved to dismiss the Consolidated Complaint on several
19 grounds, and moved to strike the class allegations. (Dkt. Nos. 96-97.) Plaintiffs filed oppositions to
20 SCEA's motions on October 12, 2010, and SCEA filed its reply briefs on October 21, 2010. (Dkt. Nos.
21 103-106.) Judge Seeborg heard the motions on November 4, 2010, and on February 17, 2011, entered
22 an order granting in part, and denying in part, the motion to dismiss (with leave to amend), and denied
23 the motion to strike. (Dkt. Nos. 108, 161.) According to Judge Seeborg, the Consolidated Complaint
24 was deficient in the following respects: Plaintiffs had failed to allege that SCEA made express
25 representations as to the *continued* availability of the "Other OS" functionality; Plaintiffs did not
26

27 ³ On April 27, 2010, the case titled *Ventura v. Sony Computer Entertainment America Inc.* ("Ventura"),
28 3:10-cv-01811-RS was filed in the United States District Court for the Northern District of California.
Several additional plaintiffs filed cases in the weeks thereafter.

1 identify the particular representations on which they relied; Plaintiffs did not allege how SCEA had
2 been unjustly enriched; and Plaintiffs did not show that SCEA had assumed control or ownership of
3 any of Plaintiffs' property, among other things. (Dkt. No. 161.)

4 Plaintiffs filed the First Amended Consolidated Class Action Complaint on March 9, 2011.
5 (Dkt. No. 165.) On April 28, 2011, SCEA again moved to dismiss. (Dkt. No. 168.) Judge Seeborg
6 heard SCEA's motion to dismiss on July 21, 2011. (Dkt. No. 179.) On December 8, 2011, Judge
7 Seeborg entered an order dismissing the action without leave to amend. (Dkt. No. 185.)

8 Plaintiffs filed a Notice of Appeal on December 22, 2011. (Ninth Circuit Case 11-18066, Dkt
9 No. 193.) The Ninth Circuit heard oral argument on October 11, 2013. (Dkt. No. 32.) On January 6,
10 2014, the Ninth Circuit affirmed in part, and reversed in part, the dismissal of Plaintiffs' case. *See In re*
11 *Sony PS3 "Other OS" Litig. v. Sony Computer Entm't Am., Inc.*, 551 Fed. Appx. 916 (9th Cir. 2014).
12 The Ninth Circuit held that the district court erred in dismissing the UCL claims for violations of the
13 fraud and unfair prongs, the FAL claim, and the CLRA claims for violations of Sections 1770(a)(5) and
14 (a)(7). The Ninth Circuit affirmed the district court's dismissal of the remaining claims and remanded
15 the case back to the district court.

16 Plaintiffs filed the Second Consolidated Class Action Complaint on May 29, 2014, which SCEA
17 answered on June 27, 2014. (Dkt. Nos. 213, 219.)

18 **C. The Parties Took Significant Discovery in the Case**

19 The Parties engaged in extensive discovery both before and after the appeal. (*See* Dkt. No. 259-
20 1 ¶ 9.) While SCEA's motions to dismiss and strike were pending, each party served written discovery.
21 (*Id.*) Having reached an impasse on several discovery issues, such as whether Plaintiffs had to produce
22 their PS3s and personal computers for SCEA's inspection, Plaintiffs moved for a protective order and
23 filed a motion to compel other discovery on December 15, 2010. (Dkt. No. 111-112.) SCEA opposed
24 Plaintiffs' motions to compel and for a protective order on January 18, 2011, and Plaintiffs filed reply
25 briefs on January 26, 2011. (Dkt. Nos. 124-125, 142.) SCEA filed a motion to compel discovery on
26 December 15, 2010. (Dkt. Nos. 116, 131, 139.)

27 After hearing oral argument, (then Magistrate) Judge Edward M. Chen issued an order granting
28 in part and denying in part Plaintiffs' motion to compel and motion for a protective order. (Dkt.

1 No. 152.) Judge Chen ordered the Plaintiffs to produce their PS3s for imaging, but not their personal
2 computers as requested by SCEA, and that Plaintiffs could direct focused discovery at SCEA's
3 Japanese parent corporation. (*Id.*) Further discovery disputes arose, however, surrounding the details of
4 the PS3 imaging process, the depositions of the named plaintiffs, and the scope of discovery to be
5 served on SCEA's parent company. Judge Chen issued an order regarding the disputes on April 11,
6 2011. (Dkt. No. 172.) SCEA also deposed two of the named plaintiffs before the case was dismissed
7 with prejudice by Judge Seeborg. (Dkt. No. 259-1 ¶ 10.)

8 After the appeal was resolved in 2014, the Parties restarted discovery. (*Id.* ¶ 11.) SCEA deposed
9 the remaining three named plaintiffs and inspected the PS3s of all of the named plaintiffs. (*Id.*)
10 Plaintiffs also responded to interrogatories and document requests propounded by SCEA. (*Id.*)
11 Plaintiffs deposed six SCEA witnesses, three of which were designated to testify on behalf of SCEA
12 pursuant to Fed. R. Civ. P. 30(b)(6). (*Id.*) Plaintiffs also reviewed approximately tens of thousands of
13 pages of documents produced by SCEA, as well as SCEA's responses to their interrogatories. (*Id.*; Dkt.
14 No. 272, Declaration of Rosemary M. Rivas in Support of Plaintiffs' Motion for Award of Attorneys'
15 Fees, Costs, and Incentive Award ("Rivas Decl.") ¶ 31.)

16 **D. The Prior Settlement**

17 While SCEA's second motion to dismiss was pending in 2011, the Parties participated in an
18 initial private mediation before the Honorable James L. Warren (Ret.) of JAMS on July 7, 2011. (Dkt.
19 No. 259-1 ¶ 13; Rivas Decl. ¶ 21.) The Parties were unable to reach a settlement that day and, once the
20 case was dismissed, the Parties ended settlement discussions. (Dkt. No. 259-1 ¶ 13.)

21 After the appeal and additional discovery was completed, the Parties renewed their settlement
22 efforts. (*Id.* ¶ 14.) The Parties participated in a second mediation before the Honorable Howard Weiner
23 (Ret.) on August 20, 2015. (*Id.*) In preparation for the mediation, the Parties again prepared detailed
24 mediation briefs that took into account the Ninth Circuit's decision from 2014 as well as key evidence
25 that had been discovered in the case in support of the Parties' respective positions. (*Id.*) While the
26 parties were unable to reach an agreement on all terms that day, they did make substantial progress and
27 continued to engage in discussions. (*Id.*)

1 Over the next five months, the parties had numerous teleconferences until they finally signed a
2 Memorandum of Understanding (“MOU”) in January 2016. (*Id.* ¶ 15.) Once the MOU was fully
3 executed, the Parties proceeded to draft the Prior Agreement and ancillary documents which also
4 proved to be difficult as the details of many key terms still needed to be negotiated. (*Id.*) Indeed, it took
5 nearly five months for the Parties to negotiate and execute the Prior Settlement Agreement. (*Id.* ¶ 36.)

6 Under the Prior Settlement, SCEA agreed to pay \$55 to each Class Member who utilized the
7 Other OS functionality (Consumer Class A) and submitted a valid claim. (Rivas Decl., Ex. B [Prior
8 Settlement] at ¶ 68(A)(1).) Consumer Class A claimants were required to attest under oath to their
9 installation of Linux and submit proof of their use of the Other OS functionality. (*Id.* at ¶ 68(A)(1)-(2).)
10 Under the Prior Settlement, claimants were also required to provide proof of their purchase or their PS3
11 unit’s serial number and PlayStation Network Sign-in ID. (*Id.* at ¶ 68(A)(1)(b).) The Prior Settlement
12 set forth a list of acceptable proofs of use. (*See id.* at ¶ 68(A)(1)-(2); *see also* Dkt. No. 270
13 (“Preliminary Approval Order”) ¶¶ 16, 18; Rivas Decl. ¶¶ 40-42.) SCEA also agreed to pay \$9.00 to
14 each Class Member who, at the time of purchase, knew about the Other OS, relied upon the Other OS
15 functionality, and intended to use the Other OS functionality (Consumer Class B) and submitted a valid
16 claim. (*See* Rivas Decl., Ex. B [Prior Settlement] at ¶ 68(B)(1)(a)(ii)(a).) Alternatively, a member of
17 Consumer Class B could attest that he or she lost value and/or desired functionality or was otherwise
18 injured as a consequence of Firmware Update 3.21. (*Id.* at ¶ 68(B)(1)(a)(ii)(b).) To present a valid
19 claim, Consumer Class B claimants were also required to attest to their purchases and provide proof of
20 purchase or a PS3 serial number and PlayStation Network Sign-in ID. (*Id.* at ¶ 68(B)(1)(b)(i)-(ii).)

21 After reaching the Prior Settlement, Plaintiffs filed a Motion for Preliminary Approval, which
22 this Court heard on July 19, 2016. (Dkt. Nos. 259, 263.) At the hearing, the Court directed Plaintiffs to
23 supplement the record with certain exemplars of the forms of proof that could be used to satisfy the
24 claims process. (Dkt. No. 268.)

25 On September 8, 2016, the Court issued its Order preliminarily approving the Prior Settlement
26 and ordering notice to the Class. (*See* Preliminary Approval Order.) The Court provisionally certified a
27 Settlement Class and found that the requirements of Rule 23(a) and Rule 23(b)(3) were provisionally
28

1 satisfied for that purpose. (*Id.* ¶¶ 3-5.) The Court approved the Notice Program, finding that it was “the
2 best notice practicable under the circumstances.” (*Id.* ¶ 10.)

3 In the order preliminarily approving the Prior Settlement, the Court appointed Class Counsel as
4 James J. Pizzirusso of Hausfeld LLP, Rosemary M. Rivas⁴ of Finkelstein Thompson LLP, and
5 Kathleen V. Fisher of Calvo Fisher & Jacob LLP. (*Id.* ¶ 7.) The Court appointed Plaintiffs Anthony
6 Ventura, Jason Baker, James Girardi, Derek Alba, and Jonathan Huber as class representatives for the
7 provisionally approved Class. (*Id.* ¶ 8.) The parties thereafter moved forward with the claims process.

8 **E. Prior Claims Process**

9 The prior notice program was successful, with the previous Settlement Administrator, Garden
10 City Group, LLC (“GCG”), determining that the measured portion of the Notice Program reached
11 approximately 86% of the target audience of people 18 years of age or older who own a PlayStation or
12 web-enabled console.⁵ (Dkt. No. 277 [Cirami Decl.] ¶ 7.)

13 During the claims process it became clear that some Class Members had no proof of purchase
14 and no longer had their PS3 units from which to obtain serial numbers. (Rivas Decl. ¶ 42.) The parties
15 created a procedure whereby Class Members who no longer had their PS3 units could obtain a
16 temporary ID number from the claims administrator which SCEA would then use to cross check against
17 its own records to verify that Class Members had purchased a PS3. (*Id.*; Dkt. No. 277 ¶ 12, Ex. D.) This
18 procedure was implemented during the claims process and communicated to the Class via the second
19 round of email notice and the Settlement Website.

20 Class Members were required to submit a completed Claim Form to GCG by December 7,
21 2016. GCG received 2,346 timely Consumer Class A Claim Forms and 8,970 timely Consumer Class B
22 Claim Forms. (Dkt No. 277 ¶ 31.) With respect to Consumer Class A claims, some 589 of 2,346 claims
23 (or approximately 25% of Consumer Class A) were rejected for insufficient proof as to whether they
24 used the Other OS functionality. (Dkt. No. 285 ¶ 4; Order Denying Final Approval at 6:20-7:9.) As to
25

26 ⁴ Ms. Rivas has since withdrawn as counsel since she left her firm and Gordon M. Fauth, Jr. has now
27 appeared in her place.

28 ⁵ The Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide states that it
is reasonable to reach between 70% and 95% of class members. (Dkt. No. 259-1, Ex. B at ¶¶ 9-19.)

1 Consumer Class B, approximately 107 of 8,970 claims were rejected (1.2%). (Order Denying Final
2 Approval at fn. 6.) At the time that the Prior Settlement was rejected, the parties were preparing to send
3 letters to those with rejected claims to allow consumers an opportunity to cure, but those efforts were
4 stopped when the Court denied final approval.

5 The Prior Settlement resulted in a low number of opt-outs: the settlement administrator received
6 only 27 requests to be excluded from the Class. (Dkt. No. 277 ¶ 33.) GCG also received 7 objections to
7 the Prior Settlement, of which three were filed by “serial objectors” asserting boilerplate objections that
8 are usually summarily rejected by courts. (*Id.* ¶ 32, Ex. J.)

9 **F. Court’s Rejection of Prior Settlement**

10 On January 31, 2017, after the process was completed and a fairness hearing held, the Court
11 issued an Order Denying Plaintiffs’ Motion for Final Approval of Class Action Settlement Without
12 Prejudice. (Dkt. No. 300.) The Order identified numerous concerns with “how the notice and claims
13 process proceeded, the results it produced, and the disproportionality of the attorneys’ fees versus the
14 class recovery.” (*Id.* at 1:13-14.) More specifically, these concerns included the following:

- 15 (i) “[m]ost significantly” to the Court, the claims rate appeared “quite low”: 11,300 claims
16 out of approximately 10 million PS3 units sold (*Id.* at 7:10-11);
- 17 (ii) while the parties asserted that the effective claims rate was not as low as it appeared
18 “because information available to them suggests that the number of purchasers who
19 utilized or cared about the Other OS feature was small,” the Court concluded that there
20 was not sufficient evidence in the record to support this contention (*Id.* at 7:12-13);
- 21 (iii) the claims process was too burdensome, given the forms of proof that claimants were
22 required to submit with their claims and “the relatively small amount” certain claimants
23 would receive for a valid claim (*Id.* at 6:17-19);
- 24 (iv) there was a relatively high number of claims that were rejected by the claims
25 administrator for insufficient proof (approximately 25% of the Consumer Class A
26 claims) (*Id.* at 6:20-22); and
- 27 (v) while the Order did not elaborate on “the disproportionality of the attorneys’ fees versus
28 the class recovery,” the Court did express concerns about the inadequacy of the evidence

1 supporting Plaintiffs' counsels' fee petition. (*Id.* at 1:13-15, 8.)

2 In addressing the procedure whereby Class Members who no longer had their PS3 units could
3 obtain a temporary ID number from the Settlement Administrator, the Court stated:

4 This "remedial" process begs the question of why the claimants were required to provide
5 receipts or serial numbers in the first place, *i.e.* if Sony already had that information in its
6 database and could simply confirm the claim by using the claimant's Playstation Network
7 ID. Given the relatively small amount Consumer Class B members would receive,
imposing unnecessary requirements could only serve to deter claims without any
apparent justification.

8 (*Id.* at 6:14-19.) The Court's concerns regarding the proof of purchase requirement (required for both
9 Class A and Class B claimants) mirrored its concerns regarding the proof of use requirements for
10 Consumer Class A in general:

11 It is notable that, despite changing the proof of purchase requirements for the PS3 unit,
12 based on a complaint that the claimant no longer had the unit in his possession, the
13 parties made no such change to the proof of use requirement. Obviously, if the claimant
14 no longer had the unit in their possession, providing proof in the form of a screenshot of
the hard drive partition or the Linux OS operating on the machine would also be
impossible.

15 (*Id.* at 7:4-9.)

16 After issuing the Order Denying Final Approval, the Court held a case management conference
17 on February 13, 2017. At the conference, the Court indicated that it was not willing to reconsider
18 approval of the Prior Settlement. (Further Case Management Hr'g Tr. at 10:25-11:4, 16:16-17, Feb. 13,
19 2017.) Following the status conference, counsel for the parties agreed that any new settlement needed
20 to be entirely re-structured to address the Court's concerns and the parties discussed attending a new
21 mediation.

22 **G. Mediation with Justice Lambden and New Settlement**

23 On April 6, 2017, the parties attended a day-long mediation session with the Hon. James
24 Lambden, Ret., of ADR Services, Inc. (*See* Declaration of Kathleen V. Fisher ("Fisher Decl."), filed
25 herewith, ¶ 2.) Although the parties did not reach an agreement that day, they did make substantial
26 progress and thereafter continued to negotiate with Justice Lambden's assistance. (*Id.*) The parties
27 eventually reached an agreement in principle, although certain outstanding issues required further
28 negotiation and assistance from Justice Lambden. (*Id.*) One lingering dispute related to what cap to set

1 on claim amounts. (*Id.* ¶ 3.) Justice Lambden made a mediator’s proposal that a cap should be set at
 2 \$65 and both parties accepted his decision. (*Id.* ¶ 3, Ex. A.) The parties entered into the New Settlement
 3 on August 24, 2017. (*Id.* ¶ 4, Ex. B.)

4 **III. THE NEW SETTLEMENT TERMS**

5 **A. Monetary Payments**

6 Under the terms of the New Settlement, the Class⁶ is defined as: all persons in the United States
 7 who purchased a Fat PS3 model⁷ in the United States between November 1, 2006, and April 1, 2010,
 8 from an authorized retailer for family, personal, and/or household use and who: “(1) used the Other OS
 9 functionality; (2) knew about the Other OS functionality; or (3) contends or believes that he or she lost
 10 value or desired functionality or was otherwise injured as a consequence of Firmware Update 3.21
 11 and/or the disablement of Other OS functionality in the Fat PS3.” (Agreement ¶ 12.)

12 SCEA will pay to the Settlement Administrator the sum of \$3,750,000 to create the Settlement
 13 Fund. (*Id.* ¶ 71.) The Settlement Fund will be used to pay, in the following order: (1) Class Notice and
 14 Administration Costs; (2) Attorneys’ Fees and Costs to Class Counsel; (3) Service Awards to the
 15 Plaintiffs; and (4) Valid Claims submitted by Settlement Class Members. (*Id.*)

16 To receive compensation from the Settlement Fund, each Settlement Class Member must
 17 submit a timely and complete Claim Form, either by mail or electronically. (*Id.* ¶ 72.) (The Claim Form
 18 is attached to the Agreement as Exhibit 1.) To submit a valid claim, claimants must attest, under
 19 penalty of perjury, that they: “(1) used the Other OS functionality; (2) knew about the Other OS
 20 functionality; or (3) contend or believe that [they] lost value or desired functionality or were otherwise
 21 injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in
 22 the Fat PS3.” (Agreement, Ex. 1.) Claimants must also provide at least one of the following: (1) their
 23

24 ⁶ Excluded from the Class are: (a) any persons who are employees, directors, officers, and agents of
 25 [Defendant] or its subsidiaries and affiliated companies; (b) any persons who timely and properly
 26 exclude themselves from the Settlement; and (c) the Court, the Court’s immediate family, and Court
 staff. (Agreement ¶ 12.)

27 ⁷ A “Fat PS3” means the Sony PlayStation®3 computer entertainment console that was manufactured
 28 between approximately November 1, 2006 and September 2009 that included the Other OS
 functionality. (Agreement ¶ 19.)

1 PS3 serial number; (2) the PlayStation Network Sign-In ID (email address) they used to create a
 2 PlayStation account associated with their Fat PS3; or (3) the PlayStation Network Online ID (the
 3 handle they chose for communicating and game play on the PlayStation Network) associated with the
 4 PlayStation account they used with their Fat PS3. (*Id.*)

5 Claimants who previously submitted claims will *not* be required to submit new claims forms.
 6 (*Id.* ¶ 72.) Rather, they will automatically be deemed valid claimants under the new Settlement. (*Id.*)

7 Settlement benefits will be distributed to Valid Claimants on a pro rata basis up to and including
 8 the sum of \$65 per valid Claim. (*Id.*) To the extent there is any money remaining in the Settlement
 9 Fund after payment of the Settlement Administrator’s costs, and after accounting for any funds
 10 designated by the Court to pay the requested attorney’s fees and costs for Class Counsel and the
 11 requested service awards to the named Plaintiffs, the parties will meet and confer as to how the leftover
 12 funds should be distributed and either party may move the Court for an order determining the most
 13 appropriate disposition of the leftover funds. (*Id.* ¶ 73.) The question of what do with the leftover funds,
 14 if any, will be resolved before any payment is mailed to the Class, so that under all circumstances only
 15 a single payment would be mailed to the Class. (*Id.*)

16 **B. Dissemination of Notice to the Settlement Class**

17 The New Settlement, as before, provides for robust notice and is designed to reach as many
 18 class members as possible. The Notice Program, as before, comports with due process and is the best
 19 notice practicable under the circumstances.

20 The proposed Notice Program is set forth in detail in the Declaration of Stephen Cirami
 21 (“Cirami Decl.”).⁸ Mr. Cirami is the Executive Vice President and Chief Operating Office of Garden
 22 City Group, LLC (“GCG”), the Parties’ proposed settlement administrator.⁹ The Notice Program calls
 23 for direct notice via email (followed by subsequent rounds of emailed notice). (Agreement ¶¶ 79(A)(i),
 24 (ii), 80; Cirami Decl. ¶¶ 13, 15-16.) SCEA previously provided GCG with an electronic database that is
 25 reasonably calculated to include the email addresses of all Class Members known by SCEA through its
 26

27 ⁸ Mr. Cirami’s declaration is attached as Exhibit C to the Fisher Declaration.

28 ⁹ While the Agreement is silent regarding who shall serve as settlement administrator, the Parties have
 subsequently agreed on GCG as the proposed settlement administrator.

1 PlayStation Network Database. (Agreement ¶ 79(A)(i).) If the Court issues the Preliminary Approval
2 Order, SCEA will update the content of the previously provided database. (*Id.*) The Settlement
3 Administrator will send the Short Form Notice, in the form approved by the Court, to Class Members,
4 via email, along with a link to the Settlement Website. (Agreement ¶ 79(A)(ii); Cirami Decl. ¶ 15.) It
5 will also send a follow-up email notice to Class Members who have not submitted claims and for whom
6 it did not receive a bounce-back in response to the first round of email notice. (Agreement ¶ 80; Cirami
7 Decl. ¶ 15.)

8 Additionally, the Notice Program provides for targeted online advertisements, social media
9 outreach, and gmail advertisements designed to reach as many Class Members as possible. (Cirami
10 Decl. ¶¶ 13-14, 17-28.) Further, the Settlement Administrator will utilize and maintain a Settlement
11 Website, where notice of the Settlement and key documents will be available, including the Long Form
12 Class Notice and Short Form Notice. (Agreement ¶¶ 79(B), 81.)

13 The Long Form Class Notice, which will be available on the Settlement Website, describes the
14 material terms of the New Settlement and the procedures that Class Members must follow to receive
15 payments under the Settlement. (*Id.* ¶ 79(B), Ex. 4.) The Long Form Class Notice also describes the
16 procedures Class Members must follow to request exclusion or to object to the Settlement. (*Id.* ¶¶
17 79(B)(ii), (iii).) Any Class Member who wishes to be excluded from the New Settlement need only
18 make a timely opt-out request. (*Id.*) The procedures for opting-out are those commonly used in class
19 action settlements; they are straightforward and described in the notice. (*Id.*) The Short Form Notice
20 provides a summary of the foregoing. (*Id.* Ex. 6.)

21 The reasonable costs of the Settlement Administrator to administer the Settlement, including
22 providing Class Notice, processing and evaluating Claims, and performing other tasks as provided in
23 the New Settlement shall be paid from the Settlement Fund. (*Id.* ¶ 71.)

24 **C. Service Award and Attorneys' Fees and Costs**

25 Pursuant to the New Settlement, Class Counsel intends to request that the Court approve a
26 Service Award for each of the Class Representatives in an amount not to exceed Three Thousand Five
27 Hundred dollars (\$3,500) each. (*Id.* ¶ 114.) Counsel intend to request an incentive award of \$3,500 for
28 each named Plaintiff to recognize them for their efforts during the action that resulted in the New

1 Settlement, including: retaining counsel; reviewing and authorizing the filing of the original and
2 amended complaints; responding to discovery, including having their depositions taken and producing
3 their PS3s for inspection; reviewing the proposed Settlement (both the Prior and New Settlements); and
4 keeping abreast of the litigation. (Fisher Decl. ¶ 7.)

5 Additionally, Counsel will apply to the Court for an award of attorneys' fees and reimbursement
6 of expenses, to be paid out of the Settlement Fund. (Agreement ¶ 111.) The Notice informs class
7 members that Counsel will request an award of attorneys' fees and costs in an amount not to exceed
8 one-third of the Settlement Fund, or \$1.25 million. (Fisher Decl. ¶ 6.) Any attorneys' fees and expenses
9 awarded by the Court will be paid out of the Settlement Fund. (Agreement ¶ 111.) Interim Co-Lead
10 Counsel's firms have worked on the case since 2010, and have incurred significant time and expenses,
11 amounting to a lodestar that is several times higher than the \$1,250,000.00 that will be requested.
12 (Fisher Decl. ¶ 6.) Indeed, as of the Prior Settlement, the collective lodestar and expenses of all counsel
13 exceeded \$4.8 million. (Rivas Decl., Exs. C, E, F; Dkt No. 273, Exs. A-B; Dkt. No. 274, Attachs. 1-2.)
14 Since then, Counsel have invested substantial additional time in negotiating the New Settlement.

15 **D. Release Provisions**

16 Each Class member who does not timely submit a valid request to opt out of the New
17 Settlement will release "all claims, demands, rights, and liabilities," whether "known or unknown," that
18 arise from the purchase of a Fat PS3 and "relate to, are based on, concern or arise out of the allegations,
19 facts, or circumstances that were asserted or could have been asserted (whether individually or on a
20 class-wide basis) in the Action." (Agreement ¶ 35.) The Released Claims include, but are not limited to,
21 claims arising under the common laws and statutes of all fifty (50) states concerning: (a) whether
22 SCEA falsely advertised or marketed the Fat PS3's Other OS functionality; (b) the disabling of the
23 Other OS functionality in the Fat PS3; (c) the issuance of Firmware Update 3.21; and/or (d) whether the
24 System Software License Agreement and/or PlayStation Network Terms of Service and User
25 Agreement enable SCEA to alter, remove or modify the features and/or functions of the Fat PS3. (*Id.*)

26 The Released Parties are: SCEA and each of its current and former parents, subsidiaries,
27 divisions, and affiliated individuals and entities, successors, predecessors, assigns, joint ventures,
28 distributors, retailers, developers and/or licensees and each and all of their respective officers, partners,

1 directors, servants, agents, shareholders, members, managers, principals, investment advisors,
 2 consultants, employees, representatives, attorneys, accountants, lenders, underwriters and insurers. (*Id.*
 3 ¶ 36.)

4 **IV. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE**

5 For settlement purposes only, Plaintiffs request that the Court provisionally certify the following
 6 proposed Class pursuant to Rule 23 of the Federal Rules of Civil Procedure:

7 [A]ll persons in the United States who purchased a Fat PS3 in the United States between
 8 November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal,
 9 and/or household use and who: (1) used the Other OS functionality; (2) knew about the
 10 Other OS functionality; or (3) contends or believes that he or she lost value or desired
 functionality or was otherwise injured as a consequence of Firmware Update 3.21 and/or
 the disablement of Other OS functionality in the Fat PS3.

11 (Agreement ¶ 12.) This proposed settlement class is substantially narrower than the settlement class
 12 proposed as part of the Prior Settlement.¹⁰ Evidence relating to the size of the new proposed Class will
 13 be filed separately by SCEA.

14 Because the proposed Class meets all the requirements of Rule 23 as explained below, the Class
 15 should be certified for settlement purposes.

16 **A. The Class Satisfies the Numerosity Requirement**

17 Rule 23(a)(1) of the Federal Rules of Civil Procedure requires that “the class [be] so numerous
 18 that joinder of all members is impracticable.” Numerosity is undisputed. Plaintiffs allege, and discovery
 19 confirmed, that Defendant sold over 10 million PS3s during the relevant time frame. While it is
 20 impossible to determine the precise number of those 10 million purchasers who used or knew about the
 21 Other OS functionality, or who contend or believe that they lost value or desired functionality or were
 22 otherwise injured as a consequence of the disablement of Other OS functionality, evidence suggests
 23 that the class size is only a fraction of the total number of PS3 purchasers.

24 **B. The Class Satisfies the Commonality Requirement**

25 Rule 23(a)(2) requires that “there [be] questions of law or fact common to the class.”
 26

27 ¹⁰ Under the Prior Settlement, Consumer Class B was defined as “[A]ll persons in the United States
 28 who purchased a Fat PS3 in the United States between November 1, 2006, and April 1, 2010, from an
 authorized retailer for family, personal, and/or household use.” (Preliminary Approval Order ¶ 3.)

1 “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same
2 injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). This means that the class
3 members’ claims “must depend upon a common contention . . . of such a nature that it is capable of
4 classwide resolution – which means that determination of its truth or falsity will resolve an issue that is
5 central to the validity of each one of the claims in one stroke.” *Id.* This requirement is also satisfied.

6 The commonality requirement is met for the Class because the claims of all Class Members
7 arise from the same contention, namely, that Defendant unlawfully removed the Other OS,
8 functionality that Plaintiffs contend it extensively marketed. Thus, the determination of whether
9 Defendant’s removal of the functionality violated an obligation created by alleged marketing will
10 resolve a central issue on a class-wide basis.

11 **C. Plaintiffs Meet the Typicality Requirement**

12 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the
13 claims or defenses of the class.” This requirement is also satisfied.

14 Courts consistently find that the typicality requirement is met if the claims arise from a common
15 course of conduct. Typicality does not require the claims to be substantially identical. *Armstrong v.*
16 *Davis*, 275 F.3d 849, 868-869 (9th Cir. 2001). Rather, the Ninth Circuit has found typicality if the
17 “unnamed class members have injuries similar to those of the named plaintiffs and that the injuries
18 result from the same, injurious course of conduct.” *Id.* (citing *Hanon v. Dataproducts Corp.*, 976 F.2d
19 497, 508 (9th Cir. 1992)).

20 Plaintiffs have the same claims as the members of the Class they seek to represent, and they
21 must satisfy the same legal elements that Class Members must satisfy, including with respect to the
22 CLRA, FAL, and UCL claims alleged in the operative complaint. They share identical legal theories
23 with the proposed Class Members, based on allegations that SCEA marketed and sold PS3s with the
24 Other OS functionality that SCEA removed. Their alleged injuries are similar, too. Thus, Rule 23(a)(3)
25 is satisfied.

26 **D. Plaintiffs Satisfy the Adequacy Requirement**

27 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the
28 interests of the class.” “Resolution of two questions determines legal adequacy: (1) do the named

1 plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the
2 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1988).

4 There are no conflicts of interest alleged or that could possibly exist here. Plaintiffs seek the
5 exact same remedy as all Class Members: namely, relief to address the claims that Defendant
6 misrepresented its product by marketing the Other OS functionality and then removing it. Plaintiffs’
7 interests therefore, are perfectly aligned with the interests of the Class.

8 The Plaintiffs’ Counsel’s adequacy is evidenced by their successful appeal of the dismissal of
9 the case, as well as the New Settlement negotiated with Defendant, which provides for important relief
10 to the Class. Further, Plaintiffs’ counsel are highly experienced in class action litigation, and have been
11 involved in many class action settlements and actions which further warrants preliminary approval of
12 the New Settlement. (Dkt. No. 259-1, Exs. C-E.)

13 **E. The Class Satisfies the Criteria of Rule 23(b)**

14 To certify a class under Rule 23(b)(3), this Court must find that the questions of law or fact
15 common to class members predominate over any questions affecting only individual members, and the
16 class action is superior to other available methods for the fair and efficient adjudication of the
17 controversy. Fed. R. Civ. P. 23(b)(3).

18 Both criteria are met in this case. The primary purpose behind Rule 23(b)(3) is the vindication
19 of the rights of people who would not have the economic power or incentive to bring a wrongdoer into
20 court to redress a wrong imposed on them.

21 **1. Common Questions Predominate**

22 “The predominance inquiry focuses on ‘the relationship between the common and individual
23 issues’ and ‘tests whether [the] proposed classes [is] sufficiently cohesive to warrant adjudication by
24 representation.’” *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009).
25 Predominance considers whether “questions of law or fact common to the class will ‘predominate over
26 any questions affecting only individual members’ as the litigation progresses.” *Amgen Inc. v. Conn.*
27 *Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1195 (2013). “Thus, this requirement is essentially a
28 heightened commonality inquiry: do the common legal and factual questions appear more significant

1 than the individualized legal and factual questions?” *Thomas v. Baca*, 231 F.R.D. 397, 402 (C.D. Cal.
 2 2005). This analysis starts with the underlying causes of action. *Erica P. John Fund, Inc. v. Halliburton*
 3 *Co.*, 131 S. Ct. 2179, 2184 (2011).

4 In analyzing whether common questions predominate, the Court must evaluate whether proving
 5 the elements of the claims can be done through common evidence applicable to the class as a whole, or
 6 whether proof will be overwhelmed with individual issues. *See Hanlon*, 150 F.3d at 1022. As the
 7 Supreme Court has noted, predominance is readily met in cases alleging consumer fraud. *Amchem*
 8 *Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

9 The legal and factual issues central to each of Plaintiffs’ claims are common to all Class
 10 Members and predominate over any individualized issues. Plaintiffs’ claims center on one question: the
 11 alleged harm caused by SCEA’s marketing and subsequent removal of the Other OS functionality from
 12 the PS3. This common question predominates over any individual questions that might exist because
 13 Defendant’s alleged conduct affected all Class Members in the same manner as the PS3 was sold
 14 nationwide with the same alleged misrepresentations. This weighs in favor of finding the requirements
 15 of Rule 23(b)(3) satisfied. *Moshogiannis v. Sec. Consultants Group, Inc.*, No. 5:10-cv-05971 EJD,
 16 2012 WL 423860, at *4 (N.D. Cal. Feb. 8, 2012). As one court noted in *Johns v. Bayer Corp.*, “these
 17 predominant questions are binary – advertisements were either misleading or not, and Bayer’s prostate
 18 health claim is either true or false.” 280 F.R.D. 551, 557 (S.D. Cal. 2012)

19 Moreover, under the California consumer protection laws at issue, whether consumers were
 20 likely to be deceived is an objective standard and most importantly, the focus is on the defendant’s
 21 conduct, not the plaintiff’s. *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008); *see also*
 22 *Yokoyama v. Midland Nat’l Life Ins. Co.*, 594 F.3d 1087, 1089, 1094 (9th Cir. 2010). Given the
 23 objective standard and focus on Defendant’s conduct, common questions of law and fact predominate.

24 **2. A Class Action Is the Superior Method for the Fair and Efficient**
 25 **Adjudication of this Controversy**

26 This case also meets the second requirement of Rule 23(b)(3): that the class action be “superior
 27 to other available methods for fairly and efficiently adjudicating the controversy.” To determine the
 28 issue of “superiority,” Rule 23(b)(3) enumerates the following factors for courts to consider:

1 (A) [T]he interest of members of the class in individually controlling the prosecution . . .
 2 of separate actions; (B) the extent and nature of any litigation concerning the controversy
 3 already commenced by . . . members of the class; (C) the desirability . . . of concentrating
 4 the litigation of the claims in the particular forum; and (D) the difficulties likely to be
 5 encountered in the management of a class action.

6 Each of these factors counsels in favor of certifying the Settlement Class here.

7 First, there is little incentive for Class Members to individually control separate actions. Each
 8 Class Member's individual claim is too small to justify the potential litigation costs that would be
 9 incurred by prosecuting these claims individually. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,
 10 809 (1985); *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d
 11 1152, 1163 (9th Cir. 2001). Because the claims of each Class Member in this case are small and
 12 virtually identical, no one member of the Class would have a materially greater interest in controlling
 13 the litigation. *See Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003).
 14 Second, Plaintiffs are unaware of any other actions by Class Members against Defendant asserting
 15 similar claims as here. This factor also militates in favor of certification. Third, certification is superior
 16 because concentrating this litigation in one forum would not only prevent the risk of inconsistent
 17 outcomes but would also "reduce litigation costs and promote greater efficiency." *Negrete v. Allianz*
 18 *Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 493 (C.D. Cal. 2006). Finally, the question here is "whether
 19 reasonably foreseeable difficulties render some other method of adjudication superior to class
 20 certification." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 525 (D.N.J.
 21 1997). As the Supreme Court has held, manageability issues will not foreclose certification for
 22 settlement purposes. *See Amchem Prods.*, 521 U.S. at 620.

23 Therefore, there are no serious manageability difficulties presented by conditionally certifying
 24 this case for settlement purposes.

25 **F. Certification of a Nationwide Settlement Class is Appropriate**

26 Fed. R. Civ. P. 23(b)(3) allows the certification of a nationwide class under California law on
 27 the facts of this case. For a state's substantive law to be selected in a constitutionally permissible
 28 manner and applied to citizens outside of that state, that state must have a "significant contact or
 significant aggregation of contacts, creating state interests, such that choice of its law is neither
 arbitrary nor fundamentally unfair." *See Sullivan v. Oracle Corp.*, 662 F.3d 1265, 1271 (9th Cir. 2011)

1 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985)).

2 Here, SCEA's contacts with California are substantial. SCEA is an American corporation with
3 its principal place of business in California, where SCEA's marketing department is located. Moreover,
4 in its Terms of Service and User Agreement ("TOS"), which all users had to agree to prior to signing into
5 the PSN and to which SCEA contends all users are bound, SCEA states: "Except as otherwise required by
6 applicable law, this Agreement shall be construed and interpreted in accordance with the laws of the State of
7 California applying to contracts fully executed and performed within the State of California." (Dkt. No. 98-
8 5 at 14.)

9 Accordingly, application of California law to the nationwide claims here is neither arbitrary nor
10 unfair. *See Sullivan*, 662 F.3d at 1271 (application of California law to nonresidents appropriate where
11 defendant was headquartered in California, defendant's alleged decision to deny plaintiffs overtime pay
12 was made in California, and where alleged work at issue was performed in California).

13 To the extent the Court is concerned about variations in the substantive laws of the various
14 states, such variations do not preclude the certification of a nationwide settlement class. The nationwide
15 settlement of a Rule 23(b)(3) action asserting California law claims is appropriate so long as there is a
16 common nucleus of facts and potential legal remedies shared between resident and nonresident class
17 members. *See Hanlon*, 150 F.3d at 1022-23 (nationwide settlement of consumer class action
18 appropriate given that "although some class members may possess slightly differing remedies based on
19 state statute or common law, the actions asserted by the class representatives are not sufficiently
20 anomalous to deny class certification."); *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 589 (C.D.
21 Cal. 2008).

22 Further support for provisionally certifying a nationwide class comes from the numerous
23 approvals of class action settlements by California federal courts in which California law claims were
24 asserted on a nationwide basis. *See, e.g., Arnold v. FitFlop USA, LLC*, No. 11-CV-0973 W (KSC),
25 2014 WL 1670133, at *6 (S.D. Cal. Apr. 28, 2014); *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-
26 04936-LB, 2015 WL 758094, at *4 (N.D. Cal. Feb. 20, 2015).

1 **V. PRELIMINARY APPROVAL IS APPROPRIATE**

2 **A. The Settlement Approval Process**

3 The law favors settlement, particularly in class actions and complex cases where substantial
4 resources can be conserved by avoiding the time, costs and rigors of prolonged litigation. *Pilkington v.*
5 *Cardinal Health, Inc. (In re Syncor ERISA Litig.)*, 516 F.3d 1095, 1101 (9th Cir. 2008); CONTE &
6 NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) (“NEWBERG”) (“By their very nature,
7 because of the uncertainties of outcome, difficulties of proof, length of litigation, class action suits lend
8 themselves readily to compromise”).

9 The first step toward effecting a proposed class-wide settlement is preliminary approval. *See*
10 MANUAL FOR COMPLEX LITIGATION § 13.14 at 173 (4th ed. 2004) (“MANUAL”) (“This [approval of a
11 settlement] usually involves a two-stage procedure. First, the judge reviews the proposal preliminarily
12 to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on
13 approval is made after the hearing.”); *see also id.*, § 21.632, at 320 (“Review of a proposed class action
14 settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and
15 the judge makes a preliminary fairness evaluation...”) (footnote omitted); NEWBERG § 11.25 at 38-39
16 (discussing the two-step approval process).

17 At the preliminary approval stage, the Court asks whether “[1] the proposed settlement appears
18 to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3]
19 does not improperly grant preferential treatment to class representatives or segments of the class, and
20 [4] falls with the range of possible approval...” *See, e.g., Burden v. SelectQuote Ins. Servs.*, No. C 10-
21 05966 SBA, 2013 WL 1190634, at *3 (N.D. Cal. Mar. 21, 2013) (citing *In re Tableware Antitrust*
22 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). Put another way, the Court should “make a
23 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms . . . [.]”
24 MANUAL § 21.632, at 321.

25 Because a preliminary evaluation of the New Settlement will reveal no “grounds to doubt its
26 fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or
27 segments of the class, or excessive compensation for attorneys,” and because the settlement “appears to
28 fall within the range of possible approval,” Plaintiffs submit that the New Settlement passes this initial

1 evaluation. *See* NEWBERG § 11.25; *see also In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079-
2 80. Accordingly, as demonstrated below, the Court should grant preliminary approval.

3 **B. The New Settlement is the Product of Well-Informed, Vigorous and Thorough**
4 **Arm’s-Length Negotiations**

5 In considering preliminary approval, the Court must ensure that “the agreement is not the
6 product of fraud or overreaching by, or collusion between, the negotiating parties” *Hanlon*, 150
7 F.3d at 1027 (internal quotes and citations omitted). As set forth above, the New Settlement was
8 achieved only after years of litigation, including extensive motion practice on Defendant’s challenges
9 to the pleadings, the appeal, the mediation briefs, depositions and document analysis, three in-person
10 mediations and months of extensive negotiations between the Parties. Further, Plaintiffs and the Class
11 were represented throughout the litigation by dedicated counsel, court-appointed Interim Co-Lead
12 Counsel with extensive experience in class action litigation. Based on the foregoing, Interim Co-Lead
13 Counsel were well-situated to evaluate the strength and weaknesses of Plaintiffs’ claims. Far from
14 being the product of anything inappropriate, the New Settlement is the result of long, hard-fought,
15 adversarial work, such that it is worthy of preliminary approval by the Court. *Cf. Hanlon*, 150 F.3d at
16 1027 (no basis to disturb settlement where there was no evidence suggesting that the settlement was
17 negotiated in haste or in the absence of information).

18 **C. The New Settlement Bears No Obvious Deficiencies and There is No Preferential**
19 **Treatment**

20 The New Settlement bears no obvious deficiencies. *See Burden*, 2013 WL 1190634, at *3.
21 There are no patent defects that would preclude its approval by the Court, such that notifying the class
22 and proceeding to a formal fairness hearing would be a waste of time. *See* NEWBERG § 11.25 (referring
23 to the Court’s inquiry as to, inter alia, “obvious deficiencies”). An examination of the New Settlement
24 will reveal no apparent unfairness, and no “unduly preferential treatment of a class representative or
25 segments of the Settlement Class, or excessive compensation for attorneys.” *See In re Zurn Pex*
26 *Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2012 WL 5055810, at *6 (D. Minn. Oct.
27 18, 2012).

1 To the contrary, the New Settlement provides cash relief to all qualified Class Members on an
2 even, pro rata basis. Moreover, with respect to the service awards of \$3,500.00 to the named Plaintiffs,
3 the Ninth Circuit has recognized that such awards are permissible and do not render a settlement unfair
4 or unreasonable. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).

5 Finally, as for attorneys' fees, Plaintiffs' counsel intend to apply for fees and reimbursement of
6 expenses not to exceed one-third of the Settlement Fund (or \$1.25 million), which is several times less
7 than their collective lodestar and expenses. (Fisher Decl. ¶ 6; Rivas Decl., Exs. C, E, F; Dkt No. 273,
8 Exs. A-B; Dkt. No. 274, Attachs. 1-2.) Thus, there are no obvious deficiencies preventing preliminary
9 approval of the New Settlement.

10 **D. The New Settlement Falls Within the Range of Possible Approval**

11 Finally, the Court must determine whether the proposed settlement falls within the range of
12 possible approval. To determine whether an agreement is fundamentally fair, adequate, and reasonable,
13 the Court may preview the factors that ultimately inform final approval: (1) the strength of plaintiff's
14 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of
15 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent
16 of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7)
17 the presence of a governmental participant; and (8) the reaction of the class members to the proposed
18 settlement. *Hanlon*, 150 F.3d at 1026.

19 These factors weigh in favor of preliminary approval. While Interim Co-Lead Counsel believe
20 that the Class's claims are meritorious, SCEA vigorously disputes this, and has argued that it never
21 advertised the Other OS functionality on the product box or its website. Further, there is a risk that the
22 Court may deny class certification or, after initial certification, subsequently decertify any class due to
23 unanticipated individualized issues. The outcome of a trial (and potential post-trial appeals) are
24 inherently uncertain in terms of both outcome and duration. Continued litigation would involve
25 considerable costs and a significant investment of time by the parties and their respective counsel and
26 would burden the resources of the Court.

27 Moreover, while Class Members will receive a portion of the PS3's purchase price (e.g., 16%
28 on a \$65 payout on a unit that cost \$400), this is consistent with any argument SCEA would make at

1 trial that under California law a full refund is unavailable because the units still have some value as
 2 they can continue to be used to play video games, Blu-ray movies, and access the PlayStation Network,
 3 among other things. *See In re Tobacco Cases II*, 240 Cal. App. 4th 779, 796 (2015).

4 While Interim Co-Lead Counsel, who are experienced in consumer class action litigation,
 5 believe the claims have merit, they also believe the proposed settlement is fair, reasonable, adequate,
 6 and is in the best interest of the Settlement Class in light of all known facts gathered through the
 7 lengthy discovery process in this case and the applicable standards on class certification and the proof
 8 requirements necessary to obtain damages under the alleged claims. (Fisher Decl. ¶ 5.) Consideration of
 9 the foregoing factors weighs in favor of preliminary approval.

10 **VI. NOTICE**

11 “Rule 23(e)(1)(B) requires the court to ‘direct notice in a reasonable manner to all class
 12 members who would be bound by a proposed settlement, voluntary dismissal, or compromise . . . [.]’”
 13 MANUAL § 21.312, at 293. In order to protect the rights of absent Class Members, the Court must direct
 14 the best notice practicable to Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,
 15 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). Additionally, “Rule 23 ...
 16 requires that individual notice in [opt-out] actions be given to class members who can be identified
 17 through reasonable efforts. Those who cannot be readily identified must be given the ‘best notice
 18 practicable under the circumstances.’” MANUAL § 21.311 at 287.

19 In this case, the proposed Notice Program includes individual notice via electronic mail, a
 20 strong Internet component to reach Class Members nationwide, and a settlement website. (Agreement
 21 ¶¶ 79-81.) *See In re HP Laser Printer Litig.*, No. SACV 07-0667 AG (RNBx), 2011 WL 3861703, at
 22 *3 (C.D. Cal. Aug. 31, 2011) (approving a notice plan utilizing direct email notice, publication of
 23 notice in print publications, advertisements on websites, and “providing a link on both notice forms to a
 24 settlement website”).

25 As for the settlement notice itself, it will comport with due process because it will:

- 26 • define the class;
- 27 • describe clearly the options open to class members and the deadlines for taking action;
- 28 • describe the essential terms of the proposed settlement;

- 1 • disclose that no special benefits other than service awards approved by the Court will be
- 2 provided to the class representatives;
- 3 • provide information regarding attorney fees;
- 4 • indicate the time and the place of the hearing to consider approval of the settlement, and
- 5 the method for objecting to or opting out of the settlement;
- 6 • describe the method for objecting to or opting out of the settlement;
- 7 • explain the procedures for allocating and distributing settlement funds and clearly set
- 8 forth the variations among different categories of class members;
- 9 • confirm that there are no non-monetary benefits provided under the settlement;
- 10 • provide information that will enable class members to estimate their individual
- 11 recoveries; and
- 12 • prominently display the address and phone number of class counsel and how to make
- 13 inquiries.

14 MANUAL § 21.312 at 295 (citation omitted). Here, the Long Form Class Notice and Short Form Notice
15 attached to the New Settlement satisfy these requirements. (Agreement, Exs. 4 and 6.)

16 The Notice Program and documents are designed to afford notice in a comprehensive and
17 reasonable manner. Plaintiffs respectfully ask the Court to approve them.

18 **VII. CONCLUSION**

19 For the reasons set forth above, Plaintiffs request that the Court enter the submitted Order
20 Preliminarily Approving Class Action Settlement and Certification of Settlement Class which: (1)
21 preliminarily approves the Settlement; (2) appoints GCG as Settlement Administrator, (3) directs
22 dissemination of notice to Class; and (4) sets a date of March 13, 2018 for the final approval hearing.

24 DATED: September 1, 2017

Respectfully submitted,

Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

CALVO FISHER & JACOB LLP

By: /s/ Kathleen V. Fisher

Kathleen V. Fisher

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HAUSFELD LLP

By: /s/ James Pizzirusso
James Pizzirusso

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FINKELSTEIN THOMPSON LLP

By: /s/ Gordon M. Fauth
Gordon M. Fauth

100 Pine Street, Suite 1250
San Francisco, California 94111
Direct Telephone: (510) 238-9610
Telephone: (415) 398-8700
Facsimile: (415) 398-8704

Filer's Attestation

I, Kathleen V. Fisher, hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

DATED: September 1, 2017

Respectfully submitted,

CALVO FISHER & JACOB LLP

By: /s/ Kathleen V. Fisher
Kathleen V. Fisher

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16 *Interim Co-Lead Counsel for Plaintiffs and the Proposed Class*

17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 In re SONY PS3 "OTHER OS" LITIGATION

Case No. 4:10-CV-01811-YGR

21 **DECLARATION OF KATHLEEN V.**
22 **FISHER IN SUPPORT OF PLAINTIFFS'**
23 **RENEWED MOTION FOR PRELIMINARY**
24 **APPROVAL OF CLASS ACTION**
25 **SETTLEMENT AND CERTIFICATION OF**
26 **SETTLEMENT CLASS**

27 Date: October 10, 2017
28 Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

1
2 I, Kathleen V. Fisher, declare as follows:

3 1. I am a partner with Calvo Fisher & Jacob LLP (“CF&J”) one of the appointed Class
4 Counsels for Plaintiffs in this class action. I make this declaration in support of Plaintiffs’ Renewed
5 Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class. I
6 have personal knowledge of the matters set forth herein and could testify thereto under oath if called
7 as a witness.

8 2. On April 6, 2017, the parties attended a day-long mediation session with the Hon.
9 James Lambden, Ret., of ADR Services, Inc. Although the parties did not reach an agreement that
10 day, they did make progress and thereafter continued to negotiate with Justice Lambden’s assistance.
11 The parties eventually reached an agreement in principle, although certain outstanding issues
12 required further negotiation and assistance from Justice Lambden.

13 3. One lingering dispute related to whether claims, which would be paid on pro rata
14 basis, should be capped. The parties eventually agreed to have Justice Lambden arbitrate the amount
15 of any cap between \$60 and \$120 with both sides being bound by any decision. On July 10, 2017,
16 Justice Lambden issued his decision that a cap should be set at \$65 per eligible claim. Attached
17 hereto as **Exhibit A** is a true and correct copy of the Mediator’s Proposal Regarding Settlement Cap.

18 4. The parties entered into a new Stipulation of Class Action Settlement and Release
19 (“Settlement” or “Settlement Agreement”) on August 24, 2017. Attached hereto as **Exhibit B** is a
20 true and correct copy of the executed Settlement Agreement. The Settlement Agreement has the
21 following exhibits:

22 **Exhibit 1: Claim Form**

23 **Exhibit 2: Form of Final Approval Order**

24 **Exhibit 3: Form of Final Judgment**

25 **Exhibit 4: Form of Long Form Class Notice**

26 **Exhibit 5: Form of Preliminary Approval Order**

27 **Exhibit 6: Form of Short Form Notice**

28 **Exhibit 7: List of Fat PS3 model numbers**

Exhibit 8: General Release

1 5. As Interim Co-Lead Counsel, I believe that the claims have merit. I also believe the
2 proposed settlement is fair, reasonable, adequate, and is in the best interest of the Settlement Class in
3 light of all known facts gathered through the lengthy discovery process in this case and the
4 applicable standards on class certification and the proof requirements necessary to obtain damages
5 under the alleged claims.

6 6. My firm has worked on this case since 2010 and has incurred significant time and
7 expenses, which, along with other Interim Co-Lead Counsel, amounts to a loadstar that is
8 substantially higher than what will be requested. The Notice informs class members that Counsel
9 will request an award of attorneys' fees and costs in an amount not to exceed one-third of the
10 Settlement Fund, or \$1.25 million.

11 7. Counsel intend to request an incentive award of \$3,500 for each named plaintiff to
12 recognize them for their efforts during the action that resulted in the Settlement, including: retaining
13 counsel; reviewing and authorizing the filing of the original and amended complaints; responding to
14 discovery, including having their depositions taken and producing their PS3s for inspection;
15 reviewing the proposed Settlement (both the Prior and New Settlements); and keeping abreast of the
16 litigation.

17 8. The Parties agreed to ask the Court to appoint Garden City Group, LLC ("GCG") as
18 the Settlement Administrator. Attached hereto as **Exhibit C** is a true and correct copy of the
19 Declaration of Stephen Cirami Regarding Notice & Settlement Administration, which describes the
20 proposed Notice Program in detail.

21
22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct.

24 Executed this 1st day of September, 2017 at San Francisco, California.

25
26
27 /s/Kathleen V. Fisher

Kathleen V. Fisher

EXHIBIT A

Hon. James Lambden (Ret.)
ADR SERVICES, INC.
100 First Street, 27th Floor
San Francisco, CA 94105
(415) 772-0900
(415) 772-0960 (FAX)
justicelambden@adrservices.org

MEDIATION BEFORE ADRS SERVICES

In re SONY PS3 "OTHER OS"
LITIGATION,) ADR Services, Case No.: 17-1517-JL
)
) MEDIATOR'S PROPOSAL REGARDING
) SETTLEMENT CAP
)
) July 10, 2017
)
Justice James Lambden (Ret.)

Following the inconclusive mediation session on April 6, 2017 the parties continued to work with the Mediator, Justice Lambden, to agree upon settlement terms. The parties agreed to submit to Justice Lambden, as Mediator, the preparation of a proposal to resolve the only unresolved issue regarding settlement terms: the cap that shall apply to cash settlement payments.

The Mediator requested briefing and arranged the telephone conference that took place on June 19, 2017 at 10:00 a.m. (PST). James Pizzirusso, Esq. and Daniel L. Warshaw, Esq. appeared for Plaintiffs. Luanne Sacks, Esq. and Michelle Floyd, Esq. of Sacks, Ricketts & Case LLP and Daniel Herp, Esq. appeared for Sony Interactive Entertainment America LLC.

The parties' previous, unapproved settlement provided compensation of \$9 for class members who provided proof of purchase and \$55 for those who also provided proof of use. The revised settlement eliminates proof of purchase and proof of use requirements and provides the same benefits to all claimants who attest that they knew of the "Other OS" or were harmed by its removal.

1 Plaintiffs argued that the cap should be set at \$120 and Defendant argued
 2 that anything more than \$60 would be an impermissible windfall to claimants.
 3 Plaintiffs also contend that unclaimed class action funds should be distributed pro-
 4 rata to members of the class, while the Defendant favor *cy pres* distribution of
 5 unclaimed funds. The parties acknowledge that the Court has discretion to craft an
 6 equitable judgment that may include *cy pres* distribution and pro-rata distribution
 as well as escheat and reversion.

7 After argument and discussion of the issues the Arbitrator took the matter
 8 under submission and proposes to resolve the issue as follows:

9 The cap on recovery shall be set at \$65 per eligible claim, which the
 10 Mediator determines to be reasonable based on the evidence submitted by the
 11 parties. In the event the total cap is not consumed by claims, the Court shall decide
 12 how to distribute any unclaimed class settlement funds. Upon acceptance by
 13 counsel this proposal shall be incorporated into the settlement agreement between
 14 the parties.

15
 16 Dated: July 10, 2017


 Justice James Lambden (Ret.)

17
 18
 19 Dated: _____

Accepted on behalf of Plaintiffs

 James Pizzirusso, Esq.

20
 21
 22
 23 Dated: _____

Accepted on behalf of Defendants

 Michelle Floyd, Esq.

EXHIBIT B

STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED, by and between Anthony Ventura, Jason Baker, James Girardi, Derrick Alba and Jonathan Huber (collectively, “**Class Representatives**”), individually and on behalf of the class they seek to represent (defined below as “**Class Members**”), on the one hand, and Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC (referred to herein as “**SCEA**”), on the other hand, through their duly-authorized counsel, that the proceedings in the United States District Court for the Northern District of California captioned *In re Sony PS3 “Other OS” Litigation*, Case No. C-10-1811 (YGR), including but not limited to the complaints referenced in Section III, paragraphs 49-51, 54, and 58, below (collectively the “**Action**”) is settled, fully and finally, on the terms and conditions set forth in this **Agreement** and the exhibits hereto, subject to the occurrences set forth herein that permit **SCEA** or the **Class Representatives** to terminate this **Agreement**, and further subject to and expressly conditioned upon the approval of the **Court** and the entry of **Final Judgment**.

I. INTRODUCTION

A. **SCEA** expressly denies any wrongdoing and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been alleged against it in the **Action**. Nevertheless, **SCEA** considers it desirable to resolve the **Action** on the terms stated herein in order to avoid further expense, inconvenience, and interference with its business operations and to dispose of burdensome litigation. Therefore, **SCEA** has determined that the settlement of the **Action** on the terms set forth herein is in its best interests.

B. This **Agreement** reflects a compromise between the **Parties** and shall in no event be construed as or deemed an admission or concession by any **Party** of the truth of any of the pleadings in the **Action** or of any fault on the part of **SCEA** and all such allegations or the validity of any purported claim or defense asserted are expressly denied. Nothing in this

Agreement shall constitute an admission of liability or may be used as evidence of liability by or against any **Party** hereto.

C. **Class Counsel** and **Class Representatives** believed that their claims were valid and were likely to prevail. Nevertheless, based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the **Action**, **Class Representatives** and **Class Counsel**, on behalf of the putative **Class**, have agreed to settle the **Action** pursuant to the provisions of this **Agreement**, after considering, among other things: (1) the substantial benefits to the **Class** under the terms of this **Agreement**; (2) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this **Agreement** promptly in order to provide expeditious and effective relief to the **Class**.

D. This **Settlement** was reached after arm's-length settlement negotiations among and between **Class Counsel**, **Class Representatives**, **SCEA**, and **SCEA's Counsel**, including three mediation sessions before three different retired judges. Most recently, the **Parties** mediated before retired Justice James Lambden on April 6, 2017 but did not reach an agreement. After extensive continued negotiations aided by Justice Lambden, the **Parties** reached an agreement on most material terms on May 26, 2017 and a final agreement on August 24, 2017.

II. DEFINITIONS AND CONVENTIONS

A. DEFINITIONS

As used in this **Agreement**, capitalized bolded terms have the following meaning, unless specifically provided otherwise:

1. "**Action**" means the putative class action complaint, including all individually filed, consolidated, coordinated and amended complaints filed in: *In re Sony PS3 "Other OS" Litigation*, Case No. C-10-1811 (YGR), currently pending in the Northern District of California, Oakland Division, before the Honorable Yvonne Gonzalez Rogers.

2. "**Administration Cost**" or "**Administrative Costs**" means the reasonable, actual and direct costs charged by the **Settlement Administrator** for its services and includes the costs

of **Class Notice**, implementing the **Claim Process** and carrying out any other responsibility consistent with the terms of this **Agreement**. **Administration Costs** do not include other fees, costs or expenses, including **Attorneys' Fees and Costs**, **Court** costs or **Service Awards**.

3. “**Administrator**” or “**Settlement Administrator**” means the third-party administrator retained by the **Parties** to administer the **Settlement**, including providing **Class Notice** to the **Class Members**, processing and evaluating **Claims** and other documents, and performing other tasks that are provided for in this **Agreement**.

4. “**Agreement**” means the terms and conditions of this document entitled “Stipulation of Class Action Settlement and Release.”

5. “**Attorneys' Fees and Costs**” means such funds as may be awarded by the **Court** to **Class Counsel** to compensate all Counsel in the **Action** for their fees and expenses incurred in connection with the **Action** and the **Settlement**.

6. “**Claim**” means the claim of a **Class Member** or his or her legal representative submitted in compliance with the procedure provided in this **Agreement** as described in Section V.

7. “**Claimant**” means a **Class Member** or his or her legal representative who submits a **Claim**.

8. “**Claim Deadline**” means ninety (90) days following the **Notice Date**, unless a different date is ordered by the **Court**.

9. “**Claim Form**” means the document by which **Class Members** may submit a **Claim**, substantially in the form attached hereto as **Exhibit 1**.

10. “**Claim Process**” means the process for submitting and reviewing **Claims** as described in Section V of this **Agreement**.

11. “**Class Counsel**” refers collectively to the law firms listed below who were appointed as Interim Co-Lead Counsel on June 30, 2010 and seek to be appointed as **Class Counsel**:

James J. Pizzirusso
Hausfeld LLP
1700 K St., NW, Ste 650
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Tel: 202-540-7200
Fax: 202-540-7201
Email: jpizzirusso@hausfeld.com

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Of Counsel
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100 Pine Street, Suite 1250
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Tel: 415-398-8700
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Email: gmf@classlitigation.com

Kathleen V. Fisher
Calvo Fisher & Jacob LLP
555 Montgomery Street
Suite 1155
San Francisco, CA 94111
Tel: 415-374-8370
Fax: 415-374-8373
Email: kfisher@calvofisher.com

12. “**Class**” or “**Class Member**” or “**Class Members**” means any and all persons in the United States who purchased a **Fat PS3** in the United States between November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal, and/or household use and who: (1) used the **Other OS** functionality; (2) knew about the **Other OS** functionality; or (3) contends or believes that he or she lost value or desired functionality or was otherwise injured as a consequence of **Firmware Update 3.21** and/or the disablement of **Other OS** functionality in the **Fat PS3**. Excluded from the **Class** are: (a) any persons who are employees, directors, officers, and agents of **SCEA** or its subsidiaries and affiliated companies; (b) any persons who timely and properly exclude themselves from this **Settlement**; and (c) the **Court**, the **Court’s** immediate family, and **Court** staff.

13. “**Class Notice**” means all types of notice that will be provided to the **Class Members** pursuant to Federal Rule of Civil Procedure 23(e), the **Preliminary Approval Order** and this **Agreement**, including email notice, publication notice, website notice, and any

additional notice that may be ordered by the **Court**.

14. “**Class Period**” means the time period between November 1, 2006 and April 1, 2010.

15. “**Class Representatives**” or “**Plaintiffs**” means plaintiffs Anthony Ventura, Jason Baker, James Girardi, Derrick Alba and Jonathan Huber, collectively.

16. “**Court**” means the United States District Court for the Northern District of California.

17. “**Defendant**” means Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC.

18. “**Effective Date**” means the earliest of the following: (1) the date of entry of the **Final Judgment** if (a) no objection is filed to the **Settlement** or if all objections are withdrawn prior to the **Court** ruling on them and (b) no appeal is taken from the **Final Approval Order** and/or **Final Judgment**; or (2) thirty-one (31) calendar days after the entry of the **Final Judgment** if objections are filed and overruled and no appeal is taken from the **Final Approval Order** and/or **Final Judgment**; (3) if one or more timely appeals is taken from the **Final Approval** and/or **Final Judgment**, thirty-one (31) calendar days after the date as of which all such appeals have been voluntarily dismissed or have been finally resolved after being heard and any subsequent appeals or petitions for certiorari have been resolved. “**Execution Date**” means the date upon which the last signature is placed on this **Agreement**.

19. “**Fat PS3**” means the Sony PlayStation®3 computer entertainment console that was manufactured between approximately November 1, 2006 and September 2009 that included the **Other OS** functionality. A list of **Fat PS3** model numbers is attached hereto as **Exhibit 7**.

20. “**Fee And Expense Award**” means an award of attorneys’ fees and the reimbursement of litigation costs and expenses authorized by the **Court** to be paid to **Class Counsel** from the **Settlement Funds** for the services they provided in representing the **Class**. “**Service Award**” means an award in an amount not to exceed three thousand five hundred dollars (\$3,500) authorized by the **Court** to be paid to each **Class Representative** for the services

they provided in representing the **Class**.

21. “**Final Approval Hearing**” or “**Fairness Hearing**” means a hearing held before the **Court** during or following which the **Court** will: (1) make a final decision regarding whether to finally approve this **Agreement** as fair, reasonable and adequate; (2) determine the amount of any **Fee And Expense Award** and any **Service Award**; and (3) rule on the merit of any objections to this **Agreement**.

22. “**Final Approval**” or “**Final Approval Order**” means an order issued by the **Court** finally approving this **Agreement** as binding upon the **Parties** and substantially in the form attached hereto as **Exhibit 2**.

23. “**Final Judgment**” means the **Court’s** order finally disposing of the **Action**, substantially in the form attached hereto as **Exhibit 3**.

24. “**Firmware Update 3.21**” means the software update that **SCEA** issued in April 2010 which, among other things, disabled the **Other OS** functionality from the Sony PlayStation®3 upon installation.

25. “**Funding Date**” is the date by which **SCEA** will deposit with the **Settlement Administrator** the sum of Three Million Seven Hundred and Fifty Thousand dollars (\$3,750,000) as **Settlement Funds**. The **Funding Date** is thirty-five days (35) after the **Effective Date**.

26. “**Long Form Class Notice**” or “**Long Form Notice**” means a notice substantially in the form of **Exhibit 4** attached hereto and approved by the **Court**, which the **Settlement Administrator** shall make available on the **Settlement Website** pursuant to the terms of this **Agreement**. The **Long Form Class Notice** will at a minimum contain the following:

- (i) a concise statement of the background of the **Action**, the certification of the **Class** for settlement purposes, and the **Settlement**;
- (ii) a description of the nature and scope of the claims, causes of action, and facts compromised in the **Settlement** that will be subject to the release;

- (iii) a description of the relief provided by the **Settlement**;
- (iv) instructions to the **Class Members** on how to submit a claim or an exclusion request and of their right to object to the **Settlement**;
- (v) an explanation of the impact of the **Settlement** on participation in any existing and future litigation, arbitration, regulatory action, remediation, or other proceeding(s);
- (vi) a statement that any relief to the **Settlement Class** is contingent on the **Court's Final Approval**;
- (vii) a statement that **Class Counsel's Fee and Expense Award** and **Service Awards** will be paid from the **Settlement Funds** and that individual **Class Members** will not be responsible themselves for paying any attorneys' fees, costs, litigation expenses, administration expenses or service awards (unless they elect to retain their own attorney at their own expense);
- (viii) the date, time, and place of the **Final Approval Hearing**, notice of **Class Members'** right to object to the **Settlement**, their right to appear in support of any timely and validly submitted objection, and their right to appear at the **Final Approval Hearing** as provided by this **Settlement** or ordered by the **Court** in the **Preliminary Approval Order**, on their own or through counsel of their own selection (at their own expense), and the procedures for doing so as further described below;
- (ix) advise that any **Final Judgment** entered in the **Action** will be binding on all **Class Members** who do not timely exclude themselves from the **Settlement**; and
- (x) inform the **Class Members** that they will be releasing all current and future claims against the **Released Parties** concerning or relating in any way to the **Released Claims**.

27. “**Notice Date**” is the date by which the initial **Class Notice** shall be completed by the **Administrator** and shall be forty-five (45) days after **Preliminary Approval** unless a different date is order by the **Court**.

28. “**Objection Deadline**” means ninety (90) days following the **Notice Date** unless a different date is ordered by the **Court**.

29. “**Opt-out Deadline**” or “**Exclusion Deadline**” means ninety (90) days following the **Notice Date** unless a different date is ordered by the **Court**.

30. “**Other OS**” means the alternative Operating System functionality that enabled a user to install Linux on a **Fat PS3**.

31. “**Party**” or “**Parties**” means individually or collectively the **Class Representatives** and **SCEA** as defined herein.

32. “**Payment Date**” is the date by which the **Settlement Administrator** will: (i) mail checks to **Valid Claimants**; and (ii) pay funds due to **Class Counsel** and **Class Representatives**. The **Payment Date** is thirty days (30) after the **Funding Date** unless the pro rata amount per **Valid Claimant** exceeds \$65.00 and the **Parties** have filed disputed motions with the Court as to the distribution of the excess funds. If such motions are filed, the **Payment Date** shall be the later of thirty days (30) after the Court’s resolution of such motions or thirty days (30) after the **Funding Date**.

33. “**Preliminary Approval**” or “**Preliminary Approval Order**” means an order entered by the **Court** preliminarily approving the terms and conditions of this **Agreement** and the **Settlement**, substantially in the form of **Exhibit 5** attached hereto.

34. “**Publication Notice**” means display of the content of the **Short Form Notice** in online and print media pursuant to a notice plan to be agreed upon by the **Parties**.

35. “**Released Claims**” means all claims, demands, rights, and liabilities, whether known or unknown, and regardless of legal theory, that arise from the purchase of a **Fat PS3** and that relate to, are based on, concern or arise out of the allegations, facts or circumstances that were asserted or could have been asserted (whether individually or on a class-wide basis) in the

Action. Released Claims include, but are not limited to, claims arising under the common laws and statutes of all fifty (50) states concerning: (a) whether **SCEA** falsely advertised or marketed the **Fat PS3's Other OS** functionality; (b) the disabling of the **Other OS** functionality in the **Fat PS3**; (c) the issuance of **Firmware Update 3.21**; and/or (d) whether the System Software License Agreement and/or PlayStation Network Terms of Service and User Agreement enable **SCEA** to alter, remove or modify features and functions of the **Fat PS3**.

36. “**Released Parties**” means **SCEA** and each of its current and former parents, subsidiaries, divisions, and affiliated individuals and entities, successors, predecessors, assigns, joint ventures, distributors, retailers, developers and/or licensees and each and all of their respective officers, partners, directors, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters and insurers.

37. “**SCEA**” means Defendant Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC.

38. “**SCEA’s Counsel**” means the following attorneys:

Luanne Sacks
Michele Floyd
Michael Scott
Sacks, Ricketts & Case, LLP
177 Post Street, Suite 650
San Francisco, CA 94108

39. “**Settlement**” means the terms and conditions set forth in this **Agreement**.

40. “**Settlement Benefit**” means payments made to **Valid Claimants** pursuant to the terms of this **Agreement**.

41. “**Settlement Class**” means all **Class Members** except: (i) persons who properly exclude themselves from the **Settlement**; (ii) any persons who are employees, directors, officers or agents of **SCEA** or its subsidiaries and affiliated companies; or (iii) any judge, justice, judicial officer, or judicial staff of the **Court** and the **Court’s** immediate family members.

42. “**Settlement Fund(s)**” means the sum of Three Million Seven Hundred and Fifty

Thousand dollars (\$3,750,000) to be paid by **SCEA** to the **Settlement Administrator** pursuant to Section V, paragraph 71, below.

43. “**Settlement Website**” means the website established by the **Settlement Administrator** consistent with the entry of the **Preliminary Approval Order** to provide information regarding the **Settlement**, including information regarding submitting a **Claim** for **Settlement Benefits**, and requesting exclusion from or objecting to the **Settlement**.

44. “**Short Form Class Notice**” or “**Short Form Notice**” means the summary form of notice of the **Settlement** that will be transmitted by email to **Class Members** and appear as the **Publication Notice**. The **Short Form Notice** shall be substantially in the form attached hereto as **Exhibit 6**.

45. “**Valid Claimant(s)**” means all **Class Members** who have not excluded themselves from the **Settlement** and who the **Settlement Administrator** determines have submitted a timely and valid **Claim**.

B. CONVENTIONS

46. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary.

47. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference.

48. The headings and captions contained in this **Agreement** are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this **Agreement** or the intent of any provision thereof.

III. THE LAWSUIT

49. On April 27, 2010, Anthony Ventura filed a class action complaint in the Northern District of California, Case No. 10-cv-1811(RS), asserting causes of action for: (1) Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Unjust

Enrichment; (4) violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 *et seq.*); and (5) violation of the California Consumers Legal Remedies Act (Cal. Civ. Code §§ 1770 *et seq.*).

50. Six more complaints alleging the same basic facts were subsequently filed as follows:

- *Baker, et al. v. Sony Computer Entertainment America LLC*, Northern District of California, Case No. 10-cv-1697 (April 30, 2010) for: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 *et seq.*); and (4) violation of the California Consumer's Legal Remedies Act (Cal. Civ. Code §§ 1770 *et seq.*).
- *Densmore, et al. v. Sony Computer Entertainment America LLC*, Northern District of California, Case No. 10-cv-1945 (April 30, 2010) for: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Trespass to Chattels; (4) Unjust Enrichment; (5) violation of the California Consumer's Legal Remedies Act (Cal. Civ. Code §§ 1770 *et seq.*); (6) violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030); (7) violation of the California False Advertising Act (Cal. Bus. & Prof. Code §§ 17500 *et seq.*); and (8) violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 *et seq.*).
- *Wright, et al. v. Sony Computer Entertainment America LLC*, Northern District of California, Case No. 10-cv-1975 (May 10, 2010) for: (1) violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 *et seq.*); (2) Breach of Contract; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4) Unjust Enrichment; (5) violation of the California Consumer's Legal Remedies Act (Cal. Civ. Code §§ 1770 *et seq.*); and (6) Equitable Relief.
- *Huber v. Sony Computer Entertainment America LLC*, Northern District of California, Case No. 10-cv-2213 (May 21, 2010) for: (1) Breach of Express Warranty;

(2) Breach of Implied Warranty of Merchantability; (3) violation of the California Consumer's Legal Remedies Act (Cal. Civ. Code §§ 1770(a)(5), (7) and (9)); (4) Conversion; (5) Violation of the Magnuson Moss Warranty Act (15 U.S.C. §§2301 *et seq.*); (6) violation of the California False Advertising Law (Bus. & Prof. Code §§ 17500 *et seq.*); and (7) violation of the California Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*).

- *Harper, et al. v. Sony Computer Entertainment America, Inc.*, Case No. 10-cv-02197 (N.D. Cal. May 21, 2010) for: (1) violation of the California Consumer Legal Remedies Act, Cal. Civ. Code. §1770, *et seq.*; (2) violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (3) violation of the California False Advertising Law, Cal. Bus. & Prof. Code § 17500; (4) Breach of Contract/Breach of Duty of Good Faith and Fair Dealing; and (5) Unjust Enrichment.

- *Benavides v. Sony Computer Entertainment America, Inc. et al.*, Case No. 10-cv-02612 (N.D. Cal. June 14, 2010) for: (1) Breach of Contract; (2) violation of the California False Advertising Law, Cal. Bus. & Prof Code § 17500, *et seq.*; (3) violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (4) Breach of Covenant of Good Faith and Fair Dealing; (5) Unjust Enrichment; (6) violation of California Consumer Legal Remedies Act, Cal. Civ. Code § 1770, *et seq.*

51. On June 16, 2010, Judge Richard Seeborg issued an order finding that the seven cases were related and the **Plaintiffs** filed an "Amended Consolidated Class Action Complaint" on July 30, 2010, captioned: *In re Sony PS3 "Other OS" Litigation*, United States District Court, Northern District of California, Case No. C-10-1811 (RS), alleging: (1) Breach of Express Warranty; (2) Breach of the Implied Warranty of Merchantability; (3) Breach of the Implied Warranty of Fitness for a Particular Purpose; (4) violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1770(a)(5), (7), (9), (19)); (5) violation of the Computer Fraud and Abuse Act (18 U.S.C. §§ 1030, *et seq.*); (6) violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301); (7) Violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.* (False Advertising); (8)

violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Unfair Competition); (9) Conversion; and (10) Unjust Enrichment.

52. In December 2010, a number of discovery disputes arose which culminated in the filing of a motion to compel by the **Plaintiffs** (Docket No. 112), a motion for a protective order filed by **Plaintiffs** (Docket No. 111), and a motion to compel filed by **SCEA** (Docket No. 116). After full briefing, Magistrate Judge Chen granted in part, and denied in part, all of the discovery motions.

53. On February 17, 2011, Judge Seeborg entered an order granting in part **SCEA's** motion to dismiss with leave to amend, and denied **SCEA's** motion to strike the class allegations in their entirety.

54. On March 9, 2011, the **Plaintiffs** filed a First Amended Class Action Complaint alleging: (1) Breach of Express Warranty; (2) Breach of Implied Warranty of Merchantability; (3) Breach of the Implied Warranty of Fitness for a Particular Purpose; (4) violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1770(a)(5), (7), (9), (19)); (5) violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030, *et seq.*); (6) violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*); (7) violation of Cal. Bus. & Prof. Code §§17500, *et seq.* (False Advertising); (8) violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Unfair Competition); and (9) Unjust Enrichment.

55. On July 7, 2011, the **Parties** participated in a private mediation session that was unsuccessful before the Honorable James L. Warren (Ret.) of JAMS.

56. On December 8, 2012, Judge Seeborg granted **SCEA's** motion to dismiss and dismissed the First Amended Class Action Complaint with prejudice.

57. The **Plaintiffs** appealed to the Ninth Circuit (Case No. 11-18066) and the Ninth Circuit issued an order affirming in part and vacating in part Judge Seeborg's order of dismissal.

58. Consistent with the Ninth Circuit's Order, the **Plaintiffs** filed a Second Amended Complaint, No. 4:10-cv-01811 (SC), on May 29, 2014 for: (1) violation of the California Consumers Legal Remedies Act (Cal. Civ. Code § 1770(a) (5), (7)); (2) violation of the

California False Advertising Law (Bus. & Prof. Code § 17500 *et seq.*); and (3) violation of the California Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*). On remand, the case was reassigned to Judge Samuel J. Conti after Judge Seeborg recused himself.

59. The **Parties** thereafter engaged in extensive discovery over the course of approximately ten (10) months. Both **Parties** propounded extensive written discovery. In response to the **Plaintiffs'** Requests for Production of Documents, **SCEA** produced approximately 4,000 documents, comprised of approximately 26,000 pages and responded to Interrogatories propounded by the **Plaintiffs**. **SCEA** deposed all five (5) named **Plaintiffs**, and the **Plaintiffs** deposed seven (7) **SCEA** witnesses, three of which were designated to testify on behalf of **SCEA** pursuant to Federal Rule of Civil Procedure 30(b)(6). The **Plaintiffs** also responded to Interrogatories propounded by **SCEA** and produced documents in response to its Requests for Production of Documents. The **Plaintiffs** also produced their PS3s for **SCEA's** inspection.

60. On or about August 20, 2015, the **Parties** mediated the case before retired Judge Howard Weiner for a full day but were unable to reach an agreement.

61. On November 3, 2015, the case was reassigned to Judge Yvonne Gonzalez Rogers upon Judge Conti's retirement.

62. The **Parties** continued to negotiate and after approximately six (6) months of extensive arm's-length negotiations, the **Parties** signed the MOU on January 28, 2016.

63. On February 12, 2016, the **Parties** notified the **Court** that they had signed the MOU and were proceeding to negotiate the details of the **Settlement** and draft a formal settlement agreement.

64. On September 8, 2016, the **Court** preliminarily approved the **Parties'** settlement and ordered notice to the class. [Dkt. 270].

65. On January 31, 2017, the **Court** denied a motion by **Plaintiffs** for final approval of the **Parties'** settlement without prejudice. [Dkt. 300].

66. In light of the **Court's** January 31, 2017 Order, the **Parties** mediated again, this

time before retired Justice James Lambden. The **Parties** attended a full day mediation session on April 6, 2017 but were unable to reach an agreement that day.

67. The **Parties** continued to negotiate with further assistance from Justice Lambden. The **Parties** reached the present **Agreement** on August 24, 2017.

IV. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

68. The **Parties** reached this **Agreement** before the **Plaintiffs** filed a motion for class certification. Accordingly, as part of this **Settlement**, the **Plaintiffs** shall include a request for conditional certification as part of their Motion for **Preliminary Approval** that seeks certification of the **Class** for settlement purposes.

69. As a material part of this **Settlement**, **SCEA**, while reserving all defenses if this **Settlement Agreement** is not finally approved, hereby stipulates and consents, solely for purposes of and in consideration of the **Settlement**, to conditional certification of the above-referenced **Class** for settlement purposes only. **SCEA's** stipulation and consent to class certification is expressly conditioned upon the entry of a **Preliminary Approval Order**, a **Final Approval Order** and **Final Judgment**. As part of its conditional stipulation, **SCEA** further consents to the appointment of **Class Counsel** and **Class Representatives** to represent the **Class**.

70. The conditional certification of the **Class**, the appointment of the **Class Representatives**, and of **Class Counsel** shall be binding only with respect to this **Settlement** and this **Settlement Agreement**. If the **Court** fails to enter a **Preliminary Approval Order** or a **Final Approval Order**, or if this **Settlement Agreement** and the **Settlement** proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, the class certification, to which the **Parties** have stipulated solely for the purposes of this **Settlement**, this **Settlement Agreement** and all of the provisions of any **Preliminary Approval Order** or any **Final Approval Order** shall be vacated by their own terms and the **Action** shall revert to its status as it existed prior to the date of this **Settlement Agreement** with respect to class certification, and appointment of class representatives and class counsel. In that event, **SCEA**

shall retain all rights it had immediately preceding the execution of this **Settlement Agreement** to object to the maintenance of the **Action** as a class action, the appointment of class representatives, and the appointment of class counsel and, in that event, nothing in this **Settlement Agreement** or other papers or proceedings related to this **Settlement** shall be used as evidence or argument by any of the **Parties** concerning whether the **Action** may properly be maintained as a class action under applicable law, whether any of the **Plaintiffs** are adequate or typical class representatives, or whether **Class Counsel** is adequate class counsel.

V. CLASS RELIEF AND DISTRIBUTION OF SETTLEMENT BENEFITS

71. Settlement Fund. In full, complete, and final settlement and satisfaction of the **Action** and all **Released Claims**, and subject to all of the terms, conditions, and provisions of this **Agreement**, including conditional certification as provided for in Section IV and **Preliminary Approval** and **Final Approval**, SCEA will pay to the **Settlement Administrator**, no later than the **Funding Date**, the sum of Three Million, Seven Hundred and Fifty Thousand dollars (\$3,750,000) to create the **Settlement Fund**, which will be used to pay, in the following order: (1) **Class Notice and Administration Costs**; (2) **Attorneys' Fees and Costs to Class Counsel**; (3) **Service Awards** to the **Plaintiffs**; and (4) **Valid Claims** submitted by **Settlement Class Members**, as described below. The **Settlement Fund** will be maintained by the **Settlement Administrator** as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. Any and all interest earned by the Qualified Settlement Fund prior to the **Payment Date** shall be distributed to **Valid Claimants** pursuant to the terms of this **Agreement**, and shall not be used for any other purpose.

72. In order to receive a benefit, each **Settlement Class Member** must submit a timely and complete **Claim Form**, either by mail or electronically, to make a claim for compensation from the **Settlement Fund**. The **Claim Form** shall be substantially in the form attached hereto as **Exhibit 1**. Settlement benefits will be distributed to **Valid Claimants** on a pro rata basis up to and including the sum of **\$65.00** per **Valid Claimant**. Any **Settlement Class**

Member who previously submitted a **Claim Form** will be automatically included and will not be required to submit an additional **Claim Form**.

73. To the extent there is any money remaining in the **Settlement Fund** after calculation and subtraction of the distribution amount due to the **Valid Claimants** pursuant to paragraph 72, above, the parties shall meet and confer regarding the manner in which remaining funds will be distributed and either party may move the **Court** for an order directing the distribution. The other **Party** may oppose such motion if they do not agree to the proposed distribution. In a contested motion, both **Parties** agree: (1) to file their moving papers no later than the date upon which the moving papers in support of **Final Approval** are filed and oppositions will be filed no later than the date upon which any opposition to the motion for **Final Approval** would be due; and (2) to limit their submission and any opposition to five (5) pages each; and (3) not to appeal the **Court's** decision. If the **Parties** are in agreement, they will submit a proposed Joint Order to the **Court**.

74. The **Settlement Administrator** shall submit to **SCEA** and to **Class Counsel** a weekly report of the **Claims** that are submitted so that **SCEA** can, in its sole discretion, verify the validity of the serial number, and/or associated PlayStation Network Sign-In ID and/or PlayStation Network Online ID provided. **SCEA** will advise the **Settlement Administrator** and **Class Counsel** not less than 15 business days after the Settlement Administrator provides its final report of any invalid serial numbers or associated PlayStation Network Sign-In ID or PlayStation Network Online IDs, if and to the extent that **SCEA** identifies any.

75. The **Settlement Administrator** shall have discretion that it will exercise in good faith to reject fraudulent, incomplete, factually inaccurate or otherwise invalid **Claims**. If requested by the **Settlement Administrator**, **Class Counsel** and **SCEA's Counsel** shall provide the **Settlement Administrator** with agreed upon guidelines for accepting and rejecting claims.

76. Distribution of Payments to the **Class**. No later than ten (10) days after the **Claims Deadline**, the **Settlement Administrator**, using the information submitted by **Class Members**, shall create and provide to **Class Counsel** and **SCEA's Counsel** a complete and final

list of **Valid Claimants** that includes each member's name and PlayStation Network Sign-In ID, PlayStation Network Online ID and/or serial number as provided and calculate the amounts due as well as any remainder funds that are available. **SCEA's Counsel** and **Class Counsel** shall take appropriate steps to safeguard the list and shall not use it for any purpose other than the administration and implementation of this **Settlement Agreement**. **Class Counsel** agrees to return this list to the **Settlement Administrator** within sixty (60) days after the **Effective Date** or within sixty (60) days of denial of **Final Approval** as applicable.

77. By the **Payment Date**, the **Settlement Administrator** shall determine the amounts due to each **Valid Claimant** and mail checks via First Class U.S. Mail, proper postage prepaid, to the **Valid Claimants**, drawn from the **Settlement Fund** as set forth in paragraphs 71-72 of this **Agreement**. Payment checks to **Valid Claimants** shall be sent to the mailing address indicated in each **Valid Claimant's Claim Form**. Checks to **Valid Claimants** shall be valid for a period of one hundred and twenty (120) days from the date appearing on the payment check. For any payment check that is returned undeliverable with forwarding address information, the **Settlement Administrator** shall re-mail the check to the provided address. For any payment check that is returned undeliverable without forwarding address information, the **Settlement Administrator** shall make reasonable efforts to identify updated address information and re-mail the check to the extent an updated address is identified.

78. If payment checks are returned undeliverable or have not been cashed one hundred and twenty (120) days after the date appearing on the payment check, the **Parties** agree that the funds will be returned to the **Settlement Fund** for distribution to the Public Justice Foundation and/or The National Consumer Law Center upon Motion to the Court.

VI. CLASS NOTICE

79. The **Parties**, subject to **Court** approval, agree to the following **Class Notice** procedures which the **Parties** agree is the best notice practicable.

A. Dissemination of the Short Form Notice.

(i) The **Parties** acknowledge that **SCEA** has already prepared an electronic database that is reasonably calculated to include the email address(es) of all the **Class Members** known by **SCEA** through its PlayStation Network Database as of the date of **Preliminary Approval**. Within fourteen (14) days of the **Preliminary Approval Order** or on such date otherwise ordered by the **Court**, **SCEA** will update the content of the previously provided database and provide it to the **Settlement Administrator**. The **Class** data shall not be provided to the **Class Representatives**, **Class Counsel** or anyone other than the **Settlement Administrator**.

(ii) By no later than the **Notice Date**, the **Settlement Administrator** shall send the **Short Form Class Notice**, in the form approved by the **Court**, to **Class Members** via email, along with a link to the **Settlement Website**. The subject line for all emails covered by this paragraph shall be: "Important - Notice of New Class Action Settlement Regarding PlayStation 3 'Other OS' Function."

(iii) **Publication of Short Form Notice.** The **Settlement Administrator** shall cause the **Short Form Notice** to be published in various publications and online platforms designed to reach as many class members as possible.

(iv) The **Class Notice** program shall be sufficient to satisfy due process.

B. Dissemination of the Long Form Notice. By no later than the **Notice Date**, the **Settlement Administrator** shall post on the **Settlement Website** the **Long Form Notice** approved by the **Court**. Both the **Short Form Notice** and the **Long Form Notice** shall include the following information:

(i) **General Terms:** The notices shall contain a plain, neutral, objective, and concise description of the nature of the **Action** and the proposed **Settlement**.

(ii) **Opt-Out Rights:** The notices shall inform **Class Members** that they have the right to opt-out of the **Class** and the **Settlement** and shall provide the deadline and procedures for exercising this right.

(iii) **Objection to Settlement:** The notices shall inform the **Class Members** of their right to object to the proposed **Settlement**, **Class Counsel's** fee application, and/or the requested **Service Awards** and of their right to appear at the **Fairness Hearing** and shall also provide the deadlines and procedures for exercising these rights.

(iv) **Fees and Expenses:** The notices shall inform **Class Members** about the potential amounts being sought by **Class Counsel** as **Attorneys' Fees and Expenses** and the amounts of the **Service Awards** being sought for the **Class Representatives**.

(v) **Claim Form for Class Members:** The notices shall advise the **Class Members** that a **Claim Form** is available on the **Settlement Website** or may be obtained from the **Settlement Administrator** and that a **Claim Form** may be submitted online or mailed to the **Settlement Administrator**. The notices shall also inform **Class Members** that they must submit a timely and valid **Claim Form** to secure a cash payment. The notices shall also provide the deadline and procedures for submitting a **Claim Form**.

80. Follow-up Email. Fifteen (15) days prior to the **Claim Deadline**, the **Settlement**

Administrator shall provide one follow-up round of e-mail notice to those **Class Members** who have not submitted **Claims** and for whom the **Settlement Administrator** did not receive a bounce-back in response to the first round of e-mail notice.

81. **Settlement Website.** The **Settlement Administrator** shall use the Internet website, appearing at www.otherossettlement.com, where **Class Members** can obtain further information about the terms of the **Settlement**, their rights, important dates and deadlines, and related information. **Class Members** shall also be able to submit a **Claim Form** electronically via the **Settlement Website**. The **Settlement Website** shall include, in PDF format, the Second Amended Complaint, this **Agreement**, the Motion for **Preliminary Approval**, the **Preliminary Approval Order**, the **Class Notice**, any papers filed in support of **Final Approval** of the **Settlement**, **Class Counsel's** application for attorneys' fees and costs (after it is filed), the **Final Approval Order** (after it is entered), and other case documents as agreed upon by the **Parties** and/or required by the **Court** and shall be operational and live as of the date the **Settlement Administrator** begins emailing notice. The **Settlement Website** shall be optimized for mobile display. The **Settlement Administrator** shall maintain the **Settlement Website** as operational and shall not take it down until two hundred (200) days after the **Effective Date**. Within five (5) business days after the **Settlement Website** is taken down, the **Settlement Administrator** shall transfer ownership of the URL for the **Settlement Website** to SCEA.

82. **Instructions to Class Members.** The **Settlement Website** will prominently contain instructions on how **Class Members** can make a **Claim** for **Settlement Benefits**, as well as instructions on how **Class Members** can request exclusion from the **Class** or file an objection.

83. **Print Notice.** To satisfy the Consumer Legal Remedies Act (CLRA) requirement, notice will run one time per week for four (4) weeks in the California edition of USA Today at an approximate ad size of 1/4 page.

84. **CAFA Notice.** Within the time prescribed by 28 U.S.C. § 1715, the **Settlement Administrator** shall serve notice of this **Settlement** to appropriate state and federal officials pursuant to the Class Action Fairness Act ("CAFA"). The **Settlement Administrator** shall be

responsible for drafting and preparing the CAFA notice in conformity with 28 U.S.C. § 1715, and for identifying the appropriate state and federal officials to be notified.

VII. GENERAL SETTLEMENT ADMINISTRATION

85. In addition to disseminating the **Class Notice** as set forth above in Section VI, the **Settlement Administrator** shall be responsible for the following:

- A. Formatting and distributing (by email) the **Short Form Notice** approved by the **Court**;
- B. Creating and maintaining a toll-free number that **Class Members** can call to request a copy of this **Agreement**, a **Claim Form**, or any other information concerning this **Settlement** or this **Agreement**;
- C. Consulting with **SCEA's Counsel** and **Class Counsel** concerning any relevant issues, including (without limitation) distribution of the **Class Notice** and processing of **Claims**;
- D. Processing and recording all requests for exclusion;
- E. Receiving objections and providing them to **Class Counsel** and **SCEA's Counsel** in a timely manner;
- F. Processing and recording **Class Members' Claims**;
- G. Determining, in its sole discretion, exercised in good faith, the validity of all **Claims** in accordance with the requirements set forth in this **Agreement**. In the event that: (1) multiple **Claims** with the same serial number are submitted; (2) a serial number is submitted but the console with that serial number is not associated with the PlayStation Network Sign-In ID or PlayStation Network Online ID identified by the **Claimant** or as confirmed by **SCEA** through its records; (3) a serial number is submitted which raises reasonable suspicion concerning the legitimacy of the serial number or the **Claim**; or (4) more than one **Claim** is submitted from the same household, *i.e.*, the same postal address, the **Settlement Administrator** shall request that the **Claimant** submit proof of purchase or may request other information as may be reasonably necessary to establish that the

Claim is legitimate, including but not limited to date and location of purchase. If adequate proof of purchase or other requested information is not provided to the **Settlement Administrator**, then the **Claim(s)** shall be deemed invalid.

H. Within ten (10) days after the **Claim Deadline**, providing to **SCEA** and **Class Counsel** a list in writing of all individuals who have submitted **Claims** regardless of validity. The list shall include the following information, as available, for each **Claimant** with personally identifying information redacted, including serial number and PlayStation Network Sign-In ID or PlayStation Network Online ID, from **Class Counsel's** list:

- (i) First and last name;
- (ii) Current mailing address;
- (iii) Current email address;
- (iv) PlayStation Network Sign-In ID or PlayStation Network Online ID, if submitted;
- (v) The **Fat PS3** serial number, if submitted;

I. Preparing, drafting, and serving the CAFA Notice;

J. Establishing a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code, and regulations promulgated thereunder, for the purpose of administering this **Settlement**;

K. Mailing and re-mailing payments to **Valid Claimants** pursuant to the terms of this **Agreement**;

L. Distributing any funds returned to the Qualified Settlement Fund after all payments have been made pursuant to paragraphs 71-72, above; and

M. Such other tasks as the **Parties** mutually agree or that the **Court** orders the **Settlement Administrator** to perform.

86. All reasonable costs associated with the administration of this **Settlement**, distribution of **Class Notice** pursuant to this **Agreement**, and any other tasks assigned to the

Settlement Administrator by this **Agreement**, by the **Parties**' mutual agreement in writing, or by the **Court**, shall be paid from the **Settlement Fund**. The **Settlement Administrator** will agree to cover all notice costs until the **Settlement Fund** is created. If the **Settlement** is not granted **Final Approval** or the **Settlement Fund** is not created, **SCEA** agrees to pay all reasonable costs associated with the distribution of **Class Notice** to the **Settlement Administrator**.

87. Subject to Section XV [Confidentiality] of this **Agreement**, the **Parties** agree that within two hundred and ten (210) days after the **Effective Date**, the **Settlement Administrator** shall destroy any and all **Class Members**' personal identifying information that it has received from **SCEA** or otherwise in connection with the implementation and administration of this **Settlement**.

88. Upon completion of the implementation and administration of the **Settlement**, the **Settlement Administrator** shall provide written certification of such completion to counsel for all **Parties**.

89. The **Settlement Administrator** shall provide any information or declarations as requested by the **Parties** to assist with seeking **Preliminary Approval** and **Final Approval**, including an affidavit about the due process reach of the **Settlement** notice, in support of **Final Approval**. The **Parties** each represent that he, she, or it will not have any financial interest in the **Settlement Administrator** ultimately appointed and otherwise will not have a relationship with the **Settlement Administrator** ultimately appointed that could create a conflict of interest.

90. The **Parties** acknowledge and agree that the **Settlement Administrator** is not an agent of the **Class Representatives**, **Class Counsel**, **SCEA**, or **SCEA's Counsel** and that the **Settlement Administrator** is not authorized by this **Agreement** or otherwise to act on behalf of the **Class Representatives**, **Class Counsel**, **SCEA**, or **SCEA's Counsel**. The **Settlement Administrator** is a neutral third-party whose appointment is subject to **Court** approval.

91. If a **Class Member** requests that the **Settlement Administrator** and/or its agent or employee refers him/her to **Class Counsel**, or if a **Class Member** requests advice beyond

merely ministerial information regarding applicable deadlines or procedures for submitting **Claims**, or other **Settlement** related questions for which the **Administrator** does not have an approved response, then the **Settlement Administrator** and/or its agent or employee shall promptly refer the inquiry to **Class Counsel**.

VIII. REQUESTS FOR EXCLUSION

92. Any **Class Member** or person legally entitled to act on his or her behalf who wishes to be excluded from the **Class** must email or mail a written request for exclusion to the **Settlement Administrator** at the email address or mailing address provided in the **Class Notice**, postmarked no later than the **Opt-out Deadline** and specifying that he or she wants to be excluded from the **Class**. Such written request for exclusion: (i) must contain the name and address of the person to be excluded; (ii) if applicable, must contain the name and address of any person claiming to be legally entitled to submit an exclusion request on behalf of the **Class Member** and the basis for such legal entitlement; (iii) must be mailed by First Class U.S. Mail, proper postage prepaid, to the **Settlement Administrator** at the specified mailing address; (iv) must be submitted or postmarked on or before the **Opt-out Deadline**; (v) should include the serial number of the **Fat PS3** that he or she purchased or the PlayStation Network Sign-In ID or PlayStation Network Online ID used for that console before April 1, 2010 if available; and (vi) must be personally signed and clearly indicate that he/she wants to be excluded from the **Class**. So-called “mass” or “class” opt-outs shall not be allowed.

93. Any **Class Member** who does not submit a timely and valid written request for exclusion as provided in paragraph 92 shall be bound by all subsequent proceedings, orders, and judgments in the **Action**, including, but not limited to, the Release, even if he or she has litigation pending or subsequently initiates litigation against **SCEA** relating to the **Released Claims**.

94. Any **Class Member** who timely submits a request for exclusion as provided in paragraph 92 shall waive and forfeit any and all rights (s)he may have to benefits of the **Settlement** if it is approved and becomes final, including monetary relief, and shall waive and

forfeit any and all rights to object to the fairness, reasonableness, or adequacy of the **Settlement**, **Class Counsel's** request for **Attorneys' Fees and Costs**, and/or the requested **Service Awards**.

95. Not later than ten (10) days after the **Opt-out Deadline**, the **Settlement Administrator** shall provide to **Class Counsel** and **SCEA's Counsel** a complete and final list of **Class Members** who submitted requests to exclude themselves from the **Class**.

IX. OBJECTIONS TO SETTLEMENT

96. Any **Class Member** or person legally entitled to act on his or her behalf may object to the fairness, reasonableness, or adequacy of the **Settlement**, **Class Counsel's** request for **Attorneys' Fees and Costs**, and/or the requested **Service Awards**. To be valid, any objection must be made in writing and mailed to the **Settlement Administrator** at the address provided in the **Class Notice**, postmarked no later than the **Objection Deadline**. In addition, any objection must include the following: (i) the name of this **Action**; (ii) the objector's full name, address, and telephone number; (iii) if applicable, the name and address of any person claiming to be legally entitled to object on behalf of a **Class Member** and the basis of such legal entitlement; (iv) all grounds for the objection; (v) the serial number of the **Fat PS3** that he or she purchased or the PlayStation Network Sign-In ID or PlayStation Network Online ID used for that console before April 1, 2010 if available; (vi) whether the objector is represented by counsel and, if so, the identity of such counsel, and all previous objections filed by the objector and their counsel within the last two years; and (vii) the objector's signature. Personal information, including serial number and PlayStation Network Sign-In ID or PlayStation Network Online ID, will be redacted before any objection is filed with the **Court**.

97. Not later than two (2) days after the **Objection Deadline**, the **Settlement Administrator** shall provide to **Class Counsel** and **SCEA's Counsel** all objections submitted by **Class Members**.

98. Any **Class Member** who submits a timely written objection as described in paragraph 96 may appear at the **Fairness Hearing**, either in person or through personal counsel hired at the **Class Member's** own personal expense and also may be subject to discovery,

subject to **Court** approval.

99. Any **Class Member** who fails to make a timely objection shall waive and forfeit any and all rights (s)he may have to object and shall be bound by all the terms of this **Settlement Agreement** and by all proceedings, orders, and judgments in the **Action** including the **Final Approval Order** and **Final Judgment**.

100. Any **Class Member** who objects to the **Settlement** shall nevertheless be entitled to all benefits of the **Settlement** if it is approved and becomes final, including monetary relief, if (s)he is a **Valid Claimant**.

101. Not later than twenty (20) days after the **Objection Deadline**, **Class Counsel** shall file with the **Court** any and all objections to the **Settlement Agreement** and/or to **Class Counsel's** Application for **Attorneys' Fees and Costs** and Request for **Service Awards**. All personally identifying information shall be redacted before objections are filed with the **Court**.

X. PRELIMINARY APPROVAL, FINAL APPROVAL AND JUDGMENT

102. Proof of the extent and effectiveness of **Class Notice** shall be provided by the **Settlement Administrator** to the **Parties** no later than fifteen (15) days following the **Objection/Exclusion Deadline**.

103. On or before August 25, 2017, or any subsequent mutually agreed upon date, **Class Representatives** shall file with the **Court** a motion seeking **Preliminary Approval** of the **Settlement** and asking the **Court** to enter a **Preliminary Approval Order** substantially in the form attached as **Exhibit 5** to this **Settlement Agreement**.

104. In connection with the motion for **Preliminary Approval**, the **Parties** shall ask the **Court** to set a date for the **Fairness Hearing** as soon as practicable, but in no event no earlier than sixty (60) days after the **Claim Deadline** and a date that ensures compliance with the requirements of 28 U.S.C. § 1715(d).

105. **Class Counsel** shall file a Motion for **Final Approval**. In connection with the Motion for **Final Approval**, the Parties shall ask that the **Court** enter the **Final Approval Order**

and **Final Judgment** substantially in the form attached to this **Settlement Agreement** as **Exhibits 2 and 3**.

106. After entry of the **Final Approval Order**, the **Parties** agree that the **Court** shall retain jurisdiction to enforce the terms of this **Settlement Agreement** and the **Final Approval Order** and the **Final Judgment**.

XI. CONDITIONS IMPACTING FINALITY OF SETTLEMENT

107. If more than 300,000 **Class Members** submit exclusion requests, then **SCEA** shall have the option, in its sole discretion, to terminate and withdraw from the **Settlement** in its entirety; provided, however, that **SCEA** must notify the **Court** in writing that it is exercising such option within fifteen (15) days after being notified in writing by the **Settlement Administrator** that the number of **Class Members** who have timely requested exclusion exceeds 300,000.

108. The **Parties** expressly agree that in the event of any of the following conditions:

- (a) The **Court** does not conditionally certify the **Class** for settlement purposes;
- (b) The **Court** does not preliminarily approve the **Settlement**;
- (c) The **Court** does not finally approve the **Settlement**;
- (d) The **Court** does not enter the **Final Approval Order** and **Final Judgment**;
- (e) **SCEA** withdraws and cancels the **Settlement** pursuant to paragraph 107;

or

- (f) This **Settlement** does not become final for any reason, including on subsequent review by any appellate court(s) in the **Action**, the **Court** ultimately rejects, modifies, or denies approval of any portion of this **Settlement Agreement** that either **Class Representatives** or **SCEA** reasonably determines is material, including, without limitation, the terms of relief, the provisions relating to notice, the definition of the **Class**, and/or the scope and terms of the **Released Claims** and **Released Parties**, then **Class**

Representatives and **SCEA** each has the right to withdraw from and terminate this **Agreement**. If the **Court** indicates that the **Settlement** will not be approved unless changes are made, then the **Parties** will attempt in good faith to reach an agreement as to any such changes before exercising their option under this Section to withdraw from this **Agreement**. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any **Fee and Expense Award** or any **Service Award** shall constitute grounds for cancellation or termination of this **Settlement Agreement**.

109. Method for Invoking Right to Terminate. Other than as provided in paragraph 108, above, any **Party** exercising its right to terminate and withdraw must exercise this option as provided under paragraph 108, above, by a signed writing served on the other **Party** no later than twenty-one (21) days after receiving notice of the event prompting the termination. The **Parties** may reasonably extend this twenty-one (21) day period by written agreement if they are attempting in good faith to reach an agreement regarding changes proposed by the **Court** pursuant to paragraph 108, above.

110. In the event that a terminating party exercises its option to withdraw from and terminate this **Settlement Agreement** pursuant to paragraph 108:

A. This **Settlement Agreement** and the **Settlement** proposed herein shall be null and void and shall have no force or effect and neither **Party** to this **Settlement Agreement** shall be bound by any of its terms, except as otherwise specifically provided for herein;

B. The **Parties** will petition to have any stay orders that are entered pursuant to this **Settlement Agreement** lifted;

C. This **Settlement Agreement** and all of its provisions, and all negotiations, statements, and proceedings relating to it, shall be without prejudice to the rights of **SCEA**, **Class Representatives**, or any **Class Member**, all of whom shall be restored to their respective positions as they existed immediately before the execution of

this **Settlement Agreement**, except that the **Parties** shall cooperate in requesting that the **Court** set a new scheduling order such that neither **Party's** substantive or procedural rights is prejudiced by the attempted **Settlement**;

D. The **Released Parties**, as defined herein, expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the **Action**, including, without limitation, **SCEA's** argument that the **Action** may not proceed on a class basis;

E. **Class Representatives** and all other **Class Members**, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive any motions as to, and arguments in support of, all claims, causes of actions, or remedies that have been or might later be asserted in the **Action** including, without limitation, any argument concerning class certification, consumer fraud, and damages;

F. This **Settlement Agreement**, the fact of its having been made, the negotiations leading to it, any informal discovery or action taken by a **Party** or **Class Member** pursuant to or in connection with this **Settlement Agreement**, or any documents or communications pertaining to this **Settlement Agreement** shall not be admissible or entered into evidence for any purpose whatsoever in the **Action** or in any other proceeding between the **Parties**, other than to enforce the terms of this **Settlement Agreement**; provided, however, that **SCEA** may rely on such evidence to defend itself in any other action not brought on behalf of the **Class** and relating to the subject matter of this **Action**.

XII. ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

A. FEE AND EXPENSE AWARD

111. **Class Counsel** intends to request that the **Court** award them **Attorney's Fees and Costs** which will be paid from the **Settlement Funds**.

112. Payment of the **Fee And Expense Award** to **Class Counsel** identified pursuant to

paragraph 111, above, shall constitute full satisfaction by **SCEA** of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs in the **Action** incurred by any attorney on behalf of the **Class Representatives**, the **Class Members**, or the **Settlement Class** and shall relieve **SCEA**, **SCEA's Counsel**, and the **Released Parties** of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the **Class Representatives**, the **Class Members**, and/or the **Settlement Class** for any **Released Claim**.

113. Neither **Class Representatives** nor the **Class** shall be responsible for any portion of **SCEA's** own legal fees, costs, and expenses incurred in the **Action**.

B. SERVICE AWARDS

114. **Class Counsel** intends to request that the **Court** approve a **Service Award** for each of the **Class Representatives** in an amount not to exceed Three Thousand Five Hundred dollars (\$3,500) each. Any **Service Awards** approved by the Court will be paid out of the **Settlement Funds**.

115. By the **Payment Date**, the Settlement Administrator shall release and deliver to **Class Counsel**, on behalf of the **Class Representatives**, any **Service Award** approved by the **Court**, provided that each of the **Class Representatives** has executed the General Release substantially in the form attached hereto as **Exhibit 8**.

116. Any **Service Award** paid to the **Class Representatives** shall be reported on an IRS Form 1099 (*i.e.*, as "Other Income") and provided to the **Class Representatives** and applicable governmental authorities.

XIII. RELEASE

117. As of the **Effective Date**, the **Class Representatives** and the **Settlement Class**, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, hereby fully release and forever discharge the **Released Parties** and further expressly agree that they shall not now or thereafter institute, maintain, or assert against the **Released Parties**, either directly or indirectly, on their own behalf, or on behalf of any class or other

person or entity, any action, regulatory action, arbitration, or court or other proceeding of any kind asserting causes of action, claims, damages, equitable, legal and administrative relief, interest, demands, rights or remedies, including, without limitation, claims for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, disgorgement, or equitable relief against the **Released Parties**, whether based on federal, state, or local law, statute, ordinance, regulation, the Constitution, contract, common law, or any other source that arise out of or in any way relate to the subject matter of the **Action** and the **Released Claims** and that were or could have been alleged in the **Action**.

118. Unless otherwise specified in this **Agreement**, nothing in this release shall be deemed to alter any presently existing contractual rights or obligations that a current PlayStation Network account holder or **Released Party** may have against the other that arises out of current use of or access to the PlayStation Network.

119. Solely with respect to any and all **Released Claims**, upon **Final Approval** and **Final Judgment**, the **Class Representatives** and the **Settlement Class** shall expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all provisions, rights, and benefits of any similar statute or law of California or of any other jurisdiction as to all known or unknown claims as against the **Released Parties**. Section 1542 provides:

A general release does not extend to claims which the creditor [in this case, the Class Member] does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor [in this case, the Released Parties].

To the extent that California law or other similar federal or state law may apply, the **Class Representatives** and the **Settlement Class** hereby agree that the provisions of Section

1542 and all such similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived and relinquished by the **Class Representatives** and the **Settlement Class** in connection with this release of the **Released Claims**.

120. The **Class Representatives** and the **Settlement Class** expressly agree that this release is, and may be raised as, a complete defense to and precludes any claim, action, or proceeding encompassed by the release against the **Released Parties**. It is the intention of the **Class Representatives** in executing this release on behalf of themselves and the **Settlement Class** to fully, finally, and forever settle and release all matters and all claims relating to the **Released Claims** in every way.

121. Without limiting the foregoing, nothing in this **Agreement** shall release, preclude, or limit any claim or action by the **Parties** to enforce the terms of this **Agreement**.

XIV. NONDISPARAGEMENT

122. Each of the **Class Representatives** and **Class Counsel** agrees that he, she, or they will not disparage **SCEA** or any of the **Released Parties** in any manner potentially harmful to them or their business, business reputation, or personal reputation related to the **Released Claims**. This agreement not to disparage includes, but is not limited to, publishing disparaging statements (whether anonymously or for ascription) on the web, in blogs, in chat rooms, in emails, or in any other electronic means of transmitting information.

XV. CONFIDENTIALITY

123. **Plaintiffs** and **Class Counsel** agree that the terms of this **Agreement** will remain confidential until the Motion for **Preliminary Approval** is filed. **Plaintiffs** and **Class Counsel** further agree that they will not make any statements or comments, written or oral, about this **Settlement** or **Settlement Agreement** to any person other than to **Class Members** in any way other than as provided in this **Settlement Agreement**, the **Class Notice**, on the **Settlement Website**, or as otherwise agreed upon by **SCEA** in writing in each instance. Notwithstanding the terms of this provision, **Class Counsel** may display a link to the **Settlement Website** on their

respective firms' websites and reference this **Settlement** as evidence of **Class Counsel's** professional qualifications in resumes, curriculum vitae, and motions for appointment as class counsel pursuant to Federal Rule of Civil Procedure 23 and similar state rules of procedure, but only to state that: (i) it was a nationwide consumer class; (ii) the general allegations involved in the **Action**; and (iii) the general terms of the **Settlement**.

124. The **Parties** acknowledge that confidential documents produced in the course of the **Action**, whether in response to formal discovery or informally for purposes of mediation, are subject to a Stipulated Protective Order. The **Parties** agree to cooperate and to work with one another to protect any confidential materials produced in discovery in the **Action**, including but not limited to, promptly complying with all aspects of the Stipulated Protective Order regarding such information and stipulating that any confidential information submitted, whether in the past or in the future, to any court will be sealed.

XVI. MISCELLANEOUS

125. The **Class Representatives** and **Class Counsel** agree not to issue any press release, unless mutually agreed by the Parties, at any time related to the **Settlement**, the lawsuit or any order preliminarily or finally approving the **Agreement**.

126. The **Parties**, their successors and assigns, and their attorneys, agree to use reasonable efforts to cooperate with one another in seeking **Court** approval of this **Agreement** and to effectuate this **Agreement**.

127. The **Parties** agree to cooperate in the settlement administration process and implementation of the **Settlement** and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the **Settlement**.

128. Each signatory to this **Agreement** hereby warrants that he or she has the authority to execute this **Agreement** and thereby bind the respective **Party**. Each **Class Representative** warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the **Released Claims** and that (s)he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other

person or entity any **Released Claims** or any part or portion thereof.

129. **Class Representatives** represent and certify that: (1) they have agreed to serve as representatives of the **Class**; (2) they are willing, able, and ready to perform all of the duties and obligations of representatives of the **Class**; (3) they have read the operative complaint or have had the contents of such pleadings described to them; (4) they are generally familiar with the results of the fact-finding undertaken by **Class Counsel**; (5) they have read this **Agreement** or have received a detailed description of it from **Class Counsel** and they have agreed to its terms; (6) they have consulted with **Class Counsel** about the **Action** and this **Settlement Agreement** and the obligations imposed on them as representatives of the **Class**; and (7) they shall remain and serve as representatives of the **Class** until the terms of the **Agreement** are effectuated, this **Agreement** is terminated in accordance with its terms, or the **Court** at any time determines that said **Plaintiffs** cannot represent the **Class**.

130. The terms of this **Agreement** shall inure to the benefit of, and be binding upon, the **Parties** and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon the **Effective Date**.

131. This **Agreement** and its attachments constitute the entire agreement of the **Parties** with respect to the matters discussed herein and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this **Agreement**, the **Parties** acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this **Agreement**. The **Parties** also acknowledge and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this **Settlement** and this **Agreement**.

132. All exhibits to this **Agreement** are integrated herein and are to be considered terms of this **Agreement** as if fully set forth herein.

133. This **Agreement** may not be amended or modified in any respect except by a written instrument duly executed by all of the **Parties** to this **Agreement** or their counsel. The **Parties** agree that nonmaterial amendments or modifications to this **Agreement** may be made in

writing after **Preliminary Approval** without the need to seek the **Court's** approval.

134. Without further order of the **Court**, the **Parties** may agree in writing to reasonable extensions of time to carry out any of the provisions of this **Agreement** or the **Preliminary Approval Order**.

135. This **Agreement** may be executed in one or more counterparts, each of which shall be an original, and this **Agreement** is effective upon execution of at least one counterpart by each **Party** to this **Agreement**.

136. Nothing in this **Agreement** may be construed as, or may be used as, an admission by the **Class Representatives** that any of their claims are without merit.

137. Nothing in this **Agreement** may constitute, may be construed as, or may be used as an admission by **SCEA** of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. **SCEA** continues to deny all liability and all of the claims, contentions, and each and every allegation made by the **Class Representatives** in the **Action**.

138. The **Parties** expressly acknowledge and agree that this **Settlement Agreement** and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this **Settlement Agreement**, any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the **Action**, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this **Settlement Agreement** or the rights of the **Parties** or their counsel. Without limiting the foregoing, neither this **Settlement Agreement** nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the **Released Parties**, **Class Representatives**, the **Class**, or the **Settlement Class** or as a waiver by the **Released Parties**, **Class Representatives**, or the **Class**

of any applicable privileges, claims, or defenses.

139. Neither **Class Counsel** nor **SCEA's Counsel** intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder, nor shall it be relied upon as such.

140. In the event of a conflict between this **Agreement** and any other document prepared pursuant to the **Settlement**, the terms of this **Agreement** will supersede and control.

141. Any failure by any **Party** to insist upon the strict performance by any other **Party** of any provision of this **Agreement** shall not be deemed a waiver of any provision of this **Agreement** and such **Party**, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this **Agreement**.

142. This **Agreement** has been, and shall be construed to have been, drafted by all the **Parties** to it and the **Parties** agree that any rule which construes ambiguities against the drafter shall have no force or effect.

143. The **Parties** agree that this **Agreement** was drafted and executed in the State of California and that the laws of the State of California shall govern its enforcement without regard to its choice of law principles. The **Parties** further agree that any action relating to or arising out of this **Agreement**, including an action to enforce or void any of its terms or to rescind it in its entirety shall be venued in state or federal court, in the Northern District of California. All **Parties** consent to personal jurisdiction in courts within the Northern District of California.

XVII. LIST OF EXHIBITS

Exhibit 1 – **Claim Form**

Exhibit 2 – Form of **Final Approval Order**

Exhibit 3 – Form of **Final Judgment**

Exhibit 4 – Form of **Long Form Class Notice**

Exhibit 5 – Form of **Preliminary Approval Order**

Exhibit 6 – Form of **Short Form Notice**

Exhibit 7 – List of **Fat PS3** model numbers

Exhibit 8 – General Release

DATED: 8/29/17

Anthony Ventura
Anthony Ventura

DATED: _____

Jason Baker

DATED: _____

James Girardi

DATED: _____

Derrick Alba

DATED: _____

Jonathan Huber

DATED: _____

Sony Interactive Entertainment America LLC

By _____

Its _____

DATED: _____

Anthony Ventura

DATED: 8-23-17



Jason Baker

DATED: _____

James Girardi

DATED: _____

Derrick Alba

DATED: _____

Jonathan Huber

DATED: _____

Sony Interactive Entertainment America LLC

By _____

Its _____

DATED: _____

Anthony Ventura

DATED: _____

Jason Baker

DATED: 8/24/17

James Girardi
James Girardi

DATED: _____

Derrick Alba

DATED: _____

Jonathan Huber

DATED: _____

Sony Interactive Entertainment America LLC

By _____
Its _____

DATED: _____

Anthony Ventura

DATED: _____

Jason Baker

DATED: _____

James Girardi

DATED: August, 25, 2017



Derrick Alba

DATED: _____

Jonathan Huber

DATED: _____

Sony Interactive Entertainment America LLC

By _____

Its _____

DATED: _____

Anthony Ventura

DATED: _____

Jason Baker

DATED: _____

James Girardi

DATED: _____

Derrick Alba

DATED: 8/24/2017

Jonathan W Huber
Jonathan Huber

DATED: _____

Sony Interactive Entertainment America LLC

By _____

Its _____

DATED: _____

Anthony Ventura

DATED: _____

Jason Baker

DATED: _____

James Girardi

DATED: _____

Derrick Alba

DATED: _____

Jonathan Huber

DATED: 9-1-2017

Sony Interactive Entertainment America LLC

By SHAWN U. LAYDEN
[Signature]
Its CEO

APPROVED AS TO FORM:

FINKELSTEIN THOMPSON LLP

By 

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Attorneys for Defendant SONY COMPUTER
ENTERTAINMENT AMERICA LLC,
currently known as SONY INTERACTIVE
ENTERTAINMENT AMERICA LLC

EXHIBIT 1

CONSUMER CLAIM FORM

In re Sony PS3 "Other OS" Litigation

United States District Court, Northern District of California

Case No. 10-CV-01811-SC

DATED: [REDACTED], 2017

PLEASE BE AWARE THAT THE DEADLINE FOR SUBMITTING CLAIMS IS [REDACTED], 2017. CLAIMS SUBMITTED AFTER THIS DATE WILL NOT BE ACCEPTED.

TO: All persons in the United States who purchased a Fat PS3 in the United States between November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal, and/or household use and who:

- (1) used the Other OS functionality;
- (2) knew about the Other OS functionality; or
- (3) contend or believe that he or she lost value or desired functionality or was otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in the Fat PS3.

PLEASE READ THIS ENTIRE CLAIM FORM CAREFULLY

TO BE ELIGIBLE TO RECEIVE A PAYMENT, YOUR COMPLETED CLAIM FORM MUST BE POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE [REDACTED]. CLAIMS SUBMITTED AFTER THIS DATE WILL NOT BE ACCEPTED.

ELIGIBILITY AND INSTRUCTIONS

IT IS IMPORTANT TO FOLLOW THESE INSTRUCTIONS CAREFULLY OR YOUR CLAIM MAY BE REJECTED.

1. You are a Class Member if you purchased a Fat PS3 in the United States between November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal, and/or household use and you: (1) used the Other OS functionality; (2) knew about the Other OS functionality; or (3) contend or believe that you lost value or desired functionality or were otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in the Fat PS3. You are eligible to receive a cash payment of up to \$65 if you submit a valid and complete a Claim Form. Because settlement funds will be distributed to Class Members on a pro rata basis, the exact dollar amount that each Class Member will receive will depend on the total number of valid claims that are submitted.

2. In order to receive a payment, you will have to attest, under penalty of perjury, that you: (1) used the Other OS functionality; (2) knew about the Other OS functionality; **or** (3) contend or believe that you lost value or desired functionality or were otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in the Fat PS3.

3. You will also have to provide at least one of the following: (1) your PS3 serial number; (2) the PlayStation Network Sign-In ID (email address) you used to create a PlayStation account associated with your Fat PS3; (3) **or** the PlayStation Network Online ID (the handle you chose for communicating and game play on the PlayStation Network) associated with the PlayStation account you used with your Fat PS3.

4. If you previously submitted a claim form in the earlier settlement in this matter, you will automatically be included and do not need to submit another claim form. If you are not sure whether you submitted a claim or have questions whether it will be honored, please contact the Settlement Administrator at [REDACTED].

4. **Claim Forms that are incomplete or untimely will be considered invalid and will prevent you from receiving payment.**

5. If you need any help to determine whether you are eligible to submit a consumer claim, please contact the Settlement Administrator at [REDACTED] or by email at [www.\[REDACTED\].com](http://www.[REDACTED].com).

6. If you are a Class Member, complete the attached Claim Form or fill in the Claim Form online. Include all required information on your Claim Form.

7. The Claims Administrator has discretion that will be exercised in good faith to determine whether your Claim Form is complete and supports your eligibility for a settlement payment in accordance with the requirements of the Settlement.

8. To receive a payment, you must include your current mailing address on the Claim Form.

9. If you move after submitting your Claim Form, please send the Settlement Administrator your new address or contact the Settlement Administrator at the following toll-free number: _____. It is your responsibility to keep a current address on file with the Settlement Administrator.

10. The Settlement Administrator will use the email address that you provide on your Claim Form to communicate with you if communications are necessary.

CLAIM FORM

Claimant Information:

Name:

Street Address:

City:

State:

Zip Code

Daytime telephone:

Email address:

Fat PS3 Serial Number:

PlayStation Network Sign-In ID:

PlayStation Network Online ID:

If you are submitting this Claim Form on behalf of someone else, please explain why you have the right to do so.

NOTE: The Claims Administrator may audit any and all claims.

Attestation

By signing below, you are signing under penalty of perjury. Signing under penalty of perjury means that the information you have provided in the Claim Form is true. It is a crime to submit a false Claim Form and sign under the penalty of perjury.

I declare under penalty of perjury that I purchased a Fat PS3 in the United States between November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal and/or household use and that I: (1) used the Other OS functionality; (2) knew about the Other OS functionality; or (3) contend or believe that I lost value or desired functionality or that I was otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in the Fat PS3.

I further declare that all of the information I have submitted in this Claim Form is true and correct.

Executed this ___ day of _____ [month] 2017 at _____
[City and State].

Print name

Checklist

Please make sure that you have:

1. Signed the Certification above.
2. Included your PS3 serial number, PlayStation Network Sign-In ID or PlayStation Network Online ID.
3. Kept a copy of your completed Claim Form for your files.
4. E-filed or mailed your Claim Form before [REDACTED].

If submitting by mail, mail your Claim Form to:

Other OS Settlement Administrator

[REDACTED]

**BE SURE TO SIGN THIS FORM ABOVE AND SUBMIT IT TO THE
SETTLEMENT ADMINISTRATOR POSTMARKED OR SUBMITTED
ELECTRONICALLY NO LATER THAN [DATE].**

EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SONY PS3 “OTHER OS”
LITIGATION

Case No. 10-CV-01811-YGR

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 This matter came before the **Court** for hearing pursuant to the following: (1) the **Court’s**
2 Order Granting Renewed Motion for **Preliminary Approval** dated _____; (2)
3 **Plaintiffs’** Renewed Motion for **Attorneys’ Fees and Costs** and for **Service Awards** for the
4 **Plaintiffs** dated _____; (3) **Plaintiffs’** Renewed Motion for **Final Approval** of
5 **Class Action Settlement** dated _____; and (4) the **Stipulation of Class Action**
6 **Settlement and Release** dated _____ (the “**Settlement**”), entered into by the
7 **Parties** to settle and finally resolve the above-captioned class action lawsuit (the “**Action**” or the
8 “Class Action Lawsuit”). Due and adequate notice having been given to the **Class** of the
9 proposed **Settlement** and the pending motions, as required by the **Court’s** orders, and upon
10 consideration of all papers filed and proceedings had herein, IT IS HEREBY ORDERED,
11 ADJUDGED AND DECREED as follows:

12 1. Capitalized, bolded terms not otherwise defined herein shall have the same
13 meaning as set forth in the **Settlement**.

14 2. The **Court** has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and has
15 personal jurisdiction over the **Parties**. Venue is proper in this District.

16 3. The “**Class**,” for purposes of this Order, shall mean:

17 [A]ny and all persons in the United States who purchased a **Fat PS3** in the United
18 States between November 1, 2006 and April 1, 2010 from an authorized retailer for
19 family, personal, and/or household use and who: (1) used the **Other OS**
20 functionality; (2) knew about the **Other OS** functionality; or (3) contends or
21 believes that he or she lost value or desired functionality or was otherwise injured
as a consequence of **Firmware Update 3.21** and/or the disablement of **Other OS**
functionality in the **Fat PS3**.

22 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the **Court** hereby
23 certifies for settlement purposes only the **Class**, which it previously provisionally certified.
24 Excluded from the **Class** are: (a) any persons who are employees, directors, officers, and agents
25 of **SCEA** or its subsidiaries and affiliated companies; (b) any persons who timely and properly
26 exclude themselves from the **Settlement**; and (c) the **Court**, the **Court’s** immediate family, and
27 **Court** staff.

28 5. The **Court** finds that the notice provisions set forth under the Class Action

1 Fairness Act, 28 U.S.C. § 1715, were complied with in this **Action**.

2 6. The **Court** finds that the program for disseminating notice to the **Class** provided
3 for in the **Settlement**, and previously approved and directed by the **Court** (the “**Notice**
4 **Program**”), has been implemented by the **Settlement Administrator** and the **Parties**, and that
5 such **Notice Program**, including the approved forms of notice, constitutes the best notice
6 practicable under the circumstances and fully satisfied due process, the requirements of Rule 23
7 of the Federal Rules of Civil Procedure and all other applicable laws.

8 7. The **Court** reaffirms that this **Action** is properly maintained as a class action, for
9 settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(3), and 23(e),
10 and that **Class Counsel** and the **Plaintiffs**, as **Class Representatives**, fairly and adequately
11 represent the interests of the **Class**. In support of its conclusion that this **Action** is properly
12 maintained as a class action, for settlement purposes, the **Court** finds as follows:

13 (a) the **Settlement Class Members** are so numerous that joinder of all members is
14 impracticable;

15 (b) there are questions of law and fact common to the **Settlement Class Members**, and
16 these questions predominate over any questions affecting individual **Settlement Class**
17 **Members**;

18 (c) the named **Class Representatives**’ claims are typical of the claims of the **Settlement**
19 **Class Members**;

20 (d) the named **Class Representatives** and **Class Counsel** have adequately represented
21 and will continue to adequately represent and protect the interests of the **Settlement**
22 **Class**;

23 (e) class-wide treatment of the disputes raised in this **Action** is superior to other available
24 methods for adjudicating the controversy before this **Court**; and

25 (f) manageability issues do not prevent certification for settlement purposes because there
26 will be no trial.

27 8. The **Court** further finds that a full and fair opportunity has been afforded to the
28 **Class Members** to opt out, to object and to participate in the hearing convened to determine

1 whether the **Settlement** should be given final approval. Accordingly, the **Court** hereby
2 determines that all members of the **Settlement Class** are bound by this **Final Approval Order**.

3 9. The **Court** finds that the **Settlement**, including the exhibits thereto, is fair,
4 reasonable and adequate to the **Settlement Class**, is in the best interests of the **Settlement Class**,
5 has been entered into in good faith and should be and hereby is fully and finally approved
6 pursuant to Federal Rule of Civil Procedure 23. The **Settlement** represents a fair resolution of
7 all claims asserted on behalf of **Plaintiffs**, as **Class Representatives**, and the **Settlement Class**
8 in this **Action**, and fully and finally resolves all such claims. **SCEA** and each member of the
9 **Settlement Class** shall be bound by the **Settlement**, including the **Release** set forth in Section
10 XIII of the **Settlement**, and by this Order and the **Final Judgment** entered in connection with
11 this Order.

12 10. After considering (1) the strength of the **Plaintiffs'** case; (2) the risk, expense,
13 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
14 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
15 and the stage of the proceedings; (6) the experience and views of counsel; and (7) the reaction of
16 the **Class Members** to the proposed **Settlement**, the **Court** hereby finds that the **Settlement** is
17 in all respects fair, reasonable, and adequate and in the best interests of the **Settlement Class**. In
18 addition, the **Court** finds that there was no collusion in connection with the **Settlement**, that the
19 **Settlement** was the product of informed and arm's-length negotiations among competent
20 counsel, and that the record is sufficiently developed to have enabled the **Class Representatives**
21 and **SCEA** to adequately evaluate and consider their respective positions. Accordingly, the
22 **Court** hereby finally and unconditionally approves the **Settlement**.

23 11. **Class Counsel** are hereby awarded attorneys' fees in the amount of
24 \$ _____, and reimbursement of their out-of-pocket litigation costs in the amount of
25 \$ _____, both of which to be paid out of the **Settlement Funds**. The **Court** finds
26 these amounts to be fair and reasonable and fairly compensates **Class Counsel** for their
27 contributions to the prosecution of this **Action** and the **Settlement**.

28 12. The **Court** hereby awards service awards in the amount of \$ _____

1 each, to each of the **Plaintiffs** as **Class Representatives**, to compensate them for their
2 commitments and efforts on behalf of the **Class** in this **Action**. These service awards will be
3 paid out of the **Settlement Funds**.

4 13. The **Parties** are to bear their own costs, except as awarded by this **Court** in this
5 **Final Approval Order**.

6 14. In its Order Granting **Plaintiff's** Renewed Motion for **Preliminary Approval**
7 (Dkt. No. ___), the **Court** directed the parties to appoint a **Settlement Administrator**. The
8 **Settlement Administrator** shall continue to perform those duties and responsibilities that
9 remain under the **Settlement** and this **Final Approval Order**.

10 15. The **Parties** and **Settlement Administrator** are hereby directed to implement this
11 **Final Approval Order** and the **Settlement** in accordance with the terms and provisions thereof,
12 including the processing and payment of **Claims**.

13 16. As of the **Effective Date**, the **Class Representatives** and the **Settlement Class**,
14 on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and
15 successors, shall be deemed to have, and by operation of this Order and the **Final Judgment**
16 entered in connection with this Order shall have, fully released and forever discharged the
17 **Released Parties** from all **Released Claims**, as more fully set forth in Section XIII of the
18 **Settlement**, including that the **Class Representatives** and the **Settlement Class** shall fully
19 release and forever discharge the **Released Parties** and further expressly agree that they shall
20 not now or thereafter institute, maintain, or assert against the **Released Parties**, either directly or
21 indirectly, on their own behalf, or on behalf of any class or other person or entity, any action,
22 regulatory action, arbitration, or court or other proceeding of any kind asserting causes of action,
23 claims, damages, equitable, legal and administrative relief, interest, demands, rights or remedies,
24 including, without limitation, claims for injunctive relief, declaratory relief, damages, mental
25 anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees,
26 litigation costs, restitution, disgorgement, or equitable relief against the **Released Parties**,
27 whether based on federal, state, or local law, statute, ordinance, regulation, the Constitution,
28 contract, common law, or any other source that arise out of or in any way relate to the subject

1 matter of the **Action** and the **Released Claims** and that were or could have been alleged in the
2 **Action**. **Released Claims** include, but are not limited to, claims arising under the common laws
3 of all fifty (50) states concerning: (a) whether **SCEA** falsely advertised or marketed the **Fat**
4 **PS3's Other OS** functionality; (b) the disabling of the **Other OS** functionality in the **Fat PS3**;
5 (c) the issuance of **Firmware Update 3.21**; and/or (d) whether the System Software License
6 Agreement and/or PlayStation Network Terms of Service and User Agreement enable **SCEA** to
7 alter, remove or modify features and/or functions of the **Fat PS3**.

8 17. As of the Final **Settlement Date**, **Plaintiffs** and, by operation of law, each
9 member of the **Settlement Class** shall further be deemed to have expressly waived and released
10 any and all provisions, rights and benefits conferred by Section 1542 of the California Civil
11 Code or similar laws of any other state or jurisdiction.

12 18. The **Court** orders that, upon the **Effective Date**, the **Settlement** shall be the
13 exclusive remedy for any and all **Released Claims** of the **Releasing Parties**.

14 19. The **Court** hereby dismisses this **Action** with prejudice, and without fees or costs
15 except as provided in the **Settlement Agreement** and this Order. **Plaintiffs** and all members of
16 the **Settlement Class** are hereby permanently barred and enjoined from commencing, pursuing,
17 maintaining, enforcing or prosecuting, either directly or indirectly, any **Released Claims** in any
18 judicial, administrative, arbitral or other forum, against any of the **Released Parties**, provided
19 that this injunction shall not apply to the claims of any **Class Members** who have timely and
20 validly requested to be excluded from the **Class**. This permanent bar and injunction is necessary
21 to protect and effectuate the **Settlement**, this Order and this **Court's** authority to effectuate the
22 **Settlement**, and is ordered in aid of this **Court's** jurisdiction and to protect its judgments.

23 20. The **Released Parties** may file this **Final Approval Order** in any other action
24 that may be brought against them in order to support a defense or counterclaim based on
25 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
26 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
27 counterclaim.

28 21. Nothing in this Order or in the **Final Judgment** entered in connection with this

1 Order shall preclude any action to enforce the terms of the **Settlement**.

2 22. Without affecting the finality of this Order in any way, the **Court** hereby retains
3 continuing jurisdiction over: (a) all matters relating to the modification, interpretation,
4 administration, implementation, effectuation and enforcement of the **Settlement**; (b) further
5 proceedings, if necessary, on **Plaintiffs’ Renewed Motion for Attorneys’ Fees and Costs** and
6 for **Service Awards** for the **Plaintiffs**; and (c) the **Parties, Class Counsel** and members of the
7 **Settlement Class** for the purpose of administering, supervising, construing and enforcing this
8 Order and the **Settlement** in accordance with its terms.

9 23. Neither this Order, the **Final Judgment** entered in connection with this Order,
10 nor the **Settlement** (nor any other document referred to herein, nor any action taken to carry out
11 this Order or the accompanying **Final Judgment**) shall be construed as or used as an admission
12 or concession by or against **SCEA** or **Released Parties** of the validity of any claim or defense or
13 any actual or potential fault, wrongdoing, or liability whatsoever. The **Settlement** and this
14 resulting **Final Approval Order** simply represent a compromise of disputed allegations.

15 24. Without further order of the **Court**, the **Parties** may agree to reasonably
16 necessary extensions of time to carry out any of the provisions of the **Settlement** and to make
17 other non-material modifications, in implementing the **Settlement**, that are not inconsistent with
18 this Order.

19 25. The Clerk shall enter **Final Judgment**, consistent with this Order, forthwith.

20 26. **Class Counsel** shall serve a copy of this **Final Approval Order** on all named
21 parties or their counsel and the **Settlement Administrator** immediately upon receipt and the
22 **Settlement Administrator** shall post a copy of this **Final Approval Order** on the **Settlement**
23 **Website** immediately upon receipt.

24 **IT IS SO ORDERED.**

25 Dated: _____

26 By: _____
27 HON. YVONNE GONZALES ROGERS
28 District Judge
U.S. District Court, Northern District of California

EXHIBIT 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SONY PS3 “OTHER OS”
LITIGATION

Case No. 10-CV-01811-YGR

[PROPOSED] FINAL JUDGMENT

1 Pursuant to the Court’s Final Approval Order (“Order”) dated _____, the Court
2 hereby ORDERS that final judgment in this matter is entered in accordance with the Order and
3 the Settlement it incorporates. The Court will have continuing jurisdiction over the Parties, the
4 Action, and the Settlement for purposes of enforcing the Settlement and resolving disputes under
5 the Settlement Agreement. This document constitutes a judgment and a separate document for
6 purposes of Federal Rule of Civil Procedure 58(a).

7 Only those persons listed in Exhibit A to this Final Judgment have submitted timely and
8 valid requests for exclusion from the Settlement Class and are therefore not bound by this Final
9 Judgment and the accompanying Final Approval Order.

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IT IS SO ORDERED.

Dated: _____

By: _____
HON. YVONNE GONZALES ROGERS
District Judge
U.S. District Court, Northern District of California

EXHIBIT 4

IF YOU BOUGHT A PLAYSTATION® 3 CONSOLE BETWEEN NOVEMBER 1, 2006, AND APRIL 1, 2010, THIS CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A federal court authorized this notice. This is not a solicitation from a lawyer and you aren't being sued.

- A proposed Settlement has been reached in a class action lawsuit against Sony Computer Entertainment America LLC (“SCEA”) (n/k/a Sony Interactive Entertainment America LLC) challenging the issuance of a firmware update to disable the “Other OS” functionality from PlayStation® 3 “Fat” model computer entertainment consoles (“Fat PS3s”). The Other OS function enabled users to run Linux and other platforms as alternative operating systems on Fat PS3s. SCEA denies that it did anything wrong. The Court has not decided who is right in the lawsuit.
- If you purchased a Fat PS3 in the United States between November 1, 2006, and April 1, 2010, from an authorized retailer for family, personal, and/or household use and you: (1) used the Other OS functionality; (2) knew about the Other OS functionality; or (3) contend or believe that you lost value or desired functionality or were otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in the Fat PS3, then you are a Class Member and may be eligible to submit a claim to receive a cash payment. Each Class Member who submits a valid claim will be entitled to receive up to \$65. The exact amount that each Class Member will receive will depend on the number of Class Members who submit valid claims. If you previously submitted a claim to the Settlement Administrator in connection with this class action lawsuit, you do not need to submit another one. Your previous claim has been retained. Please contact the Settlement Administrator if you have questions regarding the status of previously submitted claim form.
- Your legal rights are affected whether you act or do not act. Read this Notice and the information on this Settlement Website carefully. Your rights and options, and the deadlines to exercise them, are explained in this Notice.
- The Court will decide whether to approve the Settlement. Proposed payments to Class Members who do not exclude themselves from the Settlement will be made if the Court approves the Settlement. Please be patient and check this Settlement Website (www._____com) to find out when the cash payments may be available.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM	If you are a Class Member, you can submit a Claim Form online through this Settlement Website or by mail to the address provided below. The deadline to submit a Claim Form is []. See Questions 8-10 below for more details.
EXCLUDE YOURSELF FROM THE SETTLEMENT	You won't receive a cash payment from the Settlement. This is the only option that allows you to retain your right to bring another lawsuit against SCEA about the claims in this Lawsuit. The postmark or email deadline to exclude yourself is []. See Question 16 below for more details.

QUESTIONS? CALL 800-000-0000 TOLL FREE

OBJECT TO THE SETTLEMENT	Write to the Settlement Administrator if you don't like the Settlement. You may object to the Settlement and also submit a claim for payment under the Settlement. The postmark deadline to send an objection is []. See Questions 18-19 below for more details.
ATTEND THE HEARING	The Court has set a hearing on [] at [] regarding the fairness of the Settlement. You may appear at the hearing, but you don't have to. You may hire your own attorney to appear for you. See Questions 21-23 below for more details.
DO NOTHING	If the settlement is approved and you do nothing, you will not receive a cash payment. You will be bound by the settlement terms and judgment and will not be able to later sue SCEA about the claims in this lawsuit. See Question 15 below for more details.

1. WHY DID I GET THIS NOTICE?

You received this Notice because you may have purchased a Fat PS3 from an authorized retailer between November 1, 2006, and April 1, 2010. This Notice explains the lawsuit, the settlement, your legal rights, what settlement benefits are available, who is eligible for them, and how to get them.

The Court authorized this Notice because you have a right to know about the proposed Settlement and all of your options before the Court decides whether to approve the Settlement. Cash payments will be provided if the Court approves the Settlement and all objections and appeals are resolved. You will be informed of the progress of the Settlement on this Settlement Website.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *In re Sony PS3 "Other OS" Litigation*, U.S. District Court, N.D. Cal., Case No. C-10-1811 (YGR) (the "Lawsuit"). The consumers who sued are called "Plaintiffs" and/or "Class Representatives" and the company they sued, SCEA, is called the "Defendant."

2. WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit claims that disabling the Other OS functionality in Fat PS3s through a firmware update constituted an unfair and unlawful business practice and false advertising. The lawsuit seeks recovery of monetary damages to compensate Fat PS3 purchasers for the loss of the Other OS feature and functionality. The Second Amended Complaint filed in the lawsuit, which is available on this Settlement Website, contains all of the allegations and claims asserted against SCEA.

3. HOW DOES SCEA RESPOND TO THE ALLEGATIONS?

SCEA expressly denies that it did anything wrong and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been alleged against it in the Lawsuit.

4. HAS THE COURT DECIDED WHO IS RIGHT?

QUESTIONS? CALL 800-000-0000 TOLL FREE

No. The Court has not decided which of the Parties, Plaintiffs or SCEA, is right.

5. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action, the “Class Representatives” sue on behalf of themselves and other people who have similar claims (the Class Members). This lawsuit has five Class Representatives: Anthony Ventura, Jason Baker, Jonathan Huber, James Girardi, and Derek Alba. One court resolves the issues for all Class Members except those who exclude themselves from the Class. U.S. District Court Judge Yvonne Gonzales Rogers is in charge of this class action.

6. WHY IS THERE A SETTLEMENT?

The Court hasn’t decided in favor of either Plaintiffs or SCEA. Instead, both sides agreed to a Settlement. That way, they avoid the costs, uncertainty, and delay of further legal proceedings and the people affected will get the benefits of this Settlement. The Class Representatives and the attorneys appointed to represent the Class (called “Class Counsel”) believe the Settlement is in the best interest of all Class Members.

7. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

To see if you will be part of the Settlement, you must decide whether you are a member of the Class. You are a member of the Class if you:

purchased a Fat PS3 in the United States between November 1, 2006 and April 1, 2010, from an authorized retailer for family, personal, and/or household use and you: (1) used the Other OS functionality; (2) knew about the Other OS functionality; or (3) contend or believe that you lost value or desired functionality or were otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other OS functionality in the Fat PS3.

IF YOU BOUGHT A FAT PS3 BETWEEN NOVEMBER 1, 2006 AND APRIL 1, 2010, BUT ARE UNSURE IF YOU ARE ELIGIBLE TO RECEIVE BENEFITS, WHETHER YOU ARE A MEMBER OF THE CLASS, OR WHAT YOUR OPTIONS ARE, YOU MAY CONTACT THE SETTLEMENT ADMINISTRATOR AT [**phone/email**] OR YOU CAN REVIEW THE SETTLEMENT DOCUMENTS ON THIS SETTLEMENT WEBSITE (www._____.com).

8. WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement, if it is approved and becomes final, will provide a settlement fund of \$3,750,000 from which class member claims will be paid. The costs of settlement administration, plaintiffs’ attorneys’ fees and costs and service awards to the named plaintiffs will be paid from the settlement fund. Class member claims up to \$65.00 will be paid on a pro rata basis after all the fees, costs and service awards are paid. The exact amount that each class member will receive will depend on the number of valid claims that are submitted. You are eligible for a cash payment if you are a member of the class and you submit a valid claim form (as described more fully in Question 9, below) to the Settlement Administrator. If you previously submitted a claim to the Settlement Administrator in connection with this class action lawsuit, then you do not have to submit another claim form. The Settlement Administrator has retained your previously submitted claim form. Please contact the Settlement Administrator at the phone number set forth below if you have questions regarding the status of

QUESTIONS? CALL 800-000-0000 TOLL FREE

previously submitted claim form.

9. HOW DO I GET A CASH PAYMENT?

If you are eligible to receive a benefit as a Class Member, then you must submit a Claim Form to the Settlement Administrator in order to receive a cash payment. Electronic Claim Forms are available on this Settlement Website. You may also obtain a Claim Form by calling the Settlement Administrator at [phone]. The Claim Form will ask you to attest, under penalty of perjury, that you purchased a **Fat PS3** in the United States between November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal, and/or household use and that you: (1) used the **Other OS** functionality; (2) knew about the **Other OS** functionality; or (3) contend or believe that you lost value or desired functionality or were otherwise injured as a consequence of **Firmware Update 3.21** and/or the disablement of **Other OS** functionality in the **Fat PS3**. For validation purposes, you will also be asked to provide your PS3 console serial number, PlayStation Network Sign-In ID associated with your PS3 and/or the PlayStation Network Online ID associated with your PS3. You can either upload or mail the claim form to the Settlement Administrator. Further information on submitting a Claim Form is provided in Question 10, below. Again, if you previously submitted a claim to the Settlement Administrator in connection with this class action lawsuit, then you do not have to submit another claim form. The Settlement Administrator has retained your previously submitted claim form. Please contact the Settlement Administrator at the phone number set forth below if you have questions regarding the status of previously submitted claim form.

10. HOW DO I SUBMIT A CLAIM FORM AND WHAT IS THE DEADLINE?

You have two options for submitting a Claim Form:

- Online: You can submit a Claim Form online through this Settlement Website.
- By mail: You can print and fill out the Claim Form that is on this Settlement Website or request that the Settlement Administrator mail you a Claim Form, and then mail your completed Claim Form (with postage) to: [ADDRESS]

You must follow the instructions and provide all of the required information on the Claim Form. Your claim will be rejected if your Claim Form is incomplete.

Online Claim Forms must be submitted by [DATE]. Claim Forms submitted by mail must be postmarked by [DATE]. If your online Claim Form is not submitted by [date] or your mailed Claim Form is not postmarked by [date], then your claim will be rejected.

11. WHAT HAPPENS AFTER A CLAIM FORM IS SUBMITTED?

The Settlement Administrator will determine whether your Claim Form is complete and that the information that you submitted on your Claim Form is correct and valid. The Settlement Administrator may contact you for additional information if: (1) multiple claims with the same PS3 serial number are submitted; (2) a serial number is submitted but the console with that serial number is not associated with the PlayStation Network Sign-In ID or PlayStation Network Online ID identified by you; (3) a serial number is submitted that raises reasonable suspicion concerning the legitimacy of the serial number or the claim; or (4) more than one claim is submitted from the same household, i.e., the same postal address. The Settlement Administrator can also ask

QUESTIONS? CALL 800-000-0000 TOLL FREE

you to provide the date and location of your Fat PS3 purchase or other information as may be reasonably necessary for the Settlement Administrator to establish that your claim is legitimate. Your claim will be rejected if you are contacted by the Settlement Administrator for additional information but you do not provide the information requested.

12. CAN I SUBMIT MORE THAN ONE CLAIM?

Yes, you can submit one claim for each Fat PS3 that you purchased between November 1, 2006, and April 1, 2010, from an authorized retailer for family, personal, and/or household use, as long as you are a member of the Class as defined above in Question 8 of this Notice. Note, however, that if you have more than one console and submit multiple claims from the same household, the Settlement Administrator may ask you to provide additional information as set forth above in Question 11.

13. WHEN WILL I RECEIVE MY PAYMENT?

Judge Gonzales Rogers will hold a Final Approval Hearing on [DATE], to decide whether to approve the Settlement. If Judge Gonzales Rogers approves the Settlement in a Final Judgment and there are no objections to the Settlement or appeals, the cash payments will be made approximately 65 days thereafter. However, it is possible there may be objections and/or appeals related to the final approval, any attorneys' fees or costs awarded, or any incentive award to the Class Representatives. It is always uncertain whether and how these appeals will be resolved and resolving them may take time, perhaps more than a year. This website will be updated with current Settlement information including if final approval is entered and the date on which cash payments will be made. Please be patient.

14. AM I GIVING UP ANY LEGAL RIGHTS BY STAYING IN THE CLASS?

Yes. Unless you exclude yourself from the class, you will agree to a "Release" of all of the claims described in Paragraphs 117-121 of the Settlement Agreement, which is available on this Settlement Website. This means that you will not be able to sue, continue to sue, or be part of any other lawsuit or arbitration against SCEA about the Released Claims, regardless of whether you submit a Claim Form for settlement benefits. It also means that the Court's orders will apply to you and legally bind you.

15. WHAT HAPPENS IF I DO NOTHING?

If you do nothing and the Court finally approves this Settlement, you will be bound by the release of claims in this Settlement as described above even though you did not submit a Claim Form. You will not receive a cash payment.

16. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the Settlement, you must send a written statement, either by mail or email, to the Settlement Administrator saying that you want to be excluded from the lawsuit entitled *In re Sony PS3 "Other OS" Litigation*. Your request must include:

- Your name and address;

QUESTIONS? CALL 800-000-0000 TOLL FREE

- If applicable, the name and address of any person claiming to be legally entitled to submit an exclusion request on your behalf and the basis for such entitlement;
- Your Fat PS3 serial number, PlayStation Network Sign-In ID and/or your PlayStation Network Online ID; and
- A statement that you want to be excluded from the Class. You must personally sign your request for exclusion.

A sample request for exclusion letter is available on this Settlement Website. **You cannot exclude yourself by phone.**

Your exclusion request must be emailed or postmarked on or before **[date]**. Send your exclusion request to:

[SETTLEMENT ADMINISTRATOR]

Attn: In re Sony PS3 “Other OS” Litigation Class Action Exclusions
[ADDRESS]

[EMAIL ADDRESS]

17. IF I DON'T EXCLUDE MYSELF, CAN I SUE FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue any of the Released Parties, including SCEA, about the issues raised in the Lawsuit.

18. HOW DO I OBJECT TO THE SETTLEMENT?

If you are a Class Member and don't exclude yourself, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's request for attorneys' fees and expenses, and/or the request for service awards for each of the Class Representatives. Any objection must be made in writing and include the following information:

- The name of this case, which is *In re Sony PS3 “Other OS” Litigation*, U.S. District Court, N.D. Cal., Case No. C-10-1811 (YGR);
- Your full name, address, and telephone number;
- Your PS3 Serial Number, PlayStation Network Sign-In ID and/or your PlayStation Network Online ID;
- If applicable, the name and address of any person claiming to be legally entitled to object on your behalf and the basis of such legal entitlement;
- All grounds for your objection;
- Whether you are represented by counsel and, if so, the identity of such counsel;
- Your signature (an attorney's signature is not sufficient).

To be considered, your objection must be mailed to the Settlement Administrator at: [ADDRESS],

QUESTIONS? CALL 800-000-0000 TOLL FREE

postmarked no later than [DATE].

If you don't send a timely or complete objection, you will waive all objections to the Settlement and you won't be allowed to object to the Settlement at the Fairness Hearing or otherwise.

Even if you object to the Settlement, you will be eligible for cash payments as set forth above in Question 8 if you submit a valid claim, and you will still be bound by all terms of the proposed Settlement if it is finally approved by the Court.

19. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

You object to the Settlement when you wish to remain a Class Member and be subject to the Settlement, but disagree with some aspect of the Settlement. An objection allows your views to be heard in Court.

In contrast, excluding yourself from the proposed Settlement means that you are no longer part of the proposed Settlement and don't want the Settlement to apply to you even if the Court finally approves it. Once excluded from the proposed Settlement, you lose any right to receive a cash payment from the Settlement or to object to any aspect of the Settlement because the case no longer affects you.

20. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing and the Court grants final approval of the proposed Settlement, you will be included in the Settlement but you will not receive a cash payment. You will be bound by the release of claims in the Settlement Agreement and will be giving up your rights to be part of any other lawsuit or make any other claim against SCEA or other Released Parties about the issues raised in the Lawsuit (see Question 14). The Settlement Agreement, available on this Settlement Website, describes all of the claims you will release (give up).

21. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold the Fairness Hearing at : a.m./p.m. on _____, 2017, at the United States District Court for the Northern District of California, Oakland Courthouse, Courtroom 1, 4th Floor, 1301 Clay Street, Oakland, CA 94612. The hearing may be moved to a different date or time without notice, so check for updates on this Settlement Website. At this hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's application for attorneys' fees and expenses and for service awards for the Class Representatives. If there are objections, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We don't know how long the decision will take.

22. DO I HAVE TO ATTEND THE HEARING?

No, you don't have to attend the Fairness Hearing. Class Counsel will answer any questions the Court may have. If you or your personal attorney would like to attend the Fairness Hearing, you are welcome to do so at your expense. If you send a written objection, you don't have to come to Court to talk about it. As long as you submit your written objection by [date], to the proper address, and it complies with the requirements set forth in Question 18, above, the Court will consider it.

23. MAY I SPEAK AT THE HEARING?

QUESTIONS? CALL 800-000-0000 TOLL FREE

You may ask the Court for permission to speak at the Fairness Hearing. If you intend to speak at the Fairness Hearing, you may, but you are not required to, file with the Court and serve by First-Class mail on Class Counsel and SCEA’s Counsel, a Notice of Intention to Appear. Your Notice of Intention to Appear should be filed and served by [date]. In addition to sending it to the Court, please send your Notice of Intent to Appear to the following:

CLASS COUNSEL	SCEA
<p>James Pizzirusso Hausfeld LLP 1700 K St. NW. Ste. 650 Washington, D.C. 20006 (202) 540-7200 Fax: (202) 540-7201 Email: jpizzirusso@hausefeld.com</p> <p>Gordon M. Fauth Of Counsel Finkelstein Thompson LLP 100 Pine Street, Suite 1250 San Francisco, CA 94111 Direct Tel: 510-238-9610 Tel: 415-398-8700 Fax: 415-398-8704 Email: gmf@classlitigation.com</p> <p>Kathleen V. Fisher Calvo Fisher & Jacob LLP 555 Montgomery Street Suite 1155 San Francisco, CA 94111 415-374-8370 Fax: 415-374-8373 Email: kfisher@calvofisher.com</p>	<p>Luanne Sacks Michele Floyd Michael Scott Sacks, Ricketts & Case LLP 177 Post Street, Suite 650 San Francisco, CA 94108 Email: lsacks@srclaw.com mfloyd@srclaw.com mscott@srclaw.com</p>

24. DO I HAVE A LAWYER IN THE CASE?

The Class Representatives and the Class are represented by the lawyers and law firms listed in Question 23, above, under the heading “Class Counsel.” The Court has appointed these lawyers to represent the Class in the Lawsuit and you will not be charged for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

25. HOW WILL THE LAWYERS BE PAID?

Class Counsel have worked on this case since April 2010 to the present and have not been paid for their work to date. Class Counsel intend to ask the Court to approve payment of a maximum of one third of the settlement fund, or \$1,250,000 in attorneys’ fees and expenses to be paid from the settlement fund.

Class Counsel will also ask the Court to award to each of the five (5) Class Representatives a service award not to exceed \$3,500. This service award is to compensate the Class Representatives for their respective commitment and effort on behalf of the Class Members in the Lawsuit. Any service awards approved by the Court will be paid out of the settlement fund.

Class Counsel's application for attorneys' fees, expenses, and service awards will be available on this Settlement Website once it is filed.

26. HOW DO I GET MORE INFORMATION?

This notice summarizes the proposed Settlement. You can find more details in the Settlement Agreement. You can get a copy of the Settlement Agreement, read other key case documents, and get more information on this Settlement Website. You can also call [TOLL-FREE NUMBER] for more information. **DO NOT CONTACT THE COURT, SCEA, OR SCEA'S COUNSEL.**

QUESTIONS? CALL 800-000-0000 TOLL FREE

EXHIBIT 5

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SONY PS3 “OTHER OS”
LITIGATION

Case No. 10-CV-01811-YGR

**[PROPOSED] ORDER GRANTING
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

1 This matter came before the **Court** on **Plaintiffs'** Renewed Motion for **Preliminary**
2 **Approval of Class Settlement** and Certification of **Settlement Class**. The **Parties** have entered
3 into a **Settlement Agreement** dated **XXX** (the "**Settlement**") which has been filed with the
4 Court and which, if approved, would resolve the above-captioned class action lawsuit (the
5 "**Action**" or the "Class Action Lawsuit"). Upon review and consideration of the motion papers
6 and the **Settlement** and all exhibits thereto, including the proposed forms of notice to the **Class**
7 and the proposed **Claim Form**, the **Court** finds that there is sufficient basis for: (1) granting
8 preliminary approval of the **Settlement**; (2) provisionally certifying the **Class** for settlement
9 purposes only; (3) appointing **Class Counsel** and **Plaintiffs** to represent the **Class**; (4) approving
10 the **Parties'** proposed notice program and forms of notice substantially similar to those forms
11 attached to the **Settlement** and directing that notice be disseminated to the **Class** pursuant to the
12 notice program provided in the **Settlement**; (5) approving the **Parties'** proposed **Claim Form**
13 and approving the procedures set forth in the **Settlement** for **Class Members** to submit claims,
14 exclude themselves from the **Class**, and object to the **Settlement**; (6) appointing a **Settlement**
15 **Administrator** to conduct the duties assigned to that position in the **Settlement**; and (7) setting
16 a hearing (the "**Fairness Hearing**") at which the **Court** will consider: (a) whether to grant **Final**
17 **Approval of the Settlement**; (b) **Class Counsel's** Application for **Attorneys' Fees and Costs**;
18 and (c) any Request for **Service Awards** for the **Plaintiffs**.

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

20 1. Capitalized terms not otherwise defined herein shall have the same meaning as set
21 forth in the **Settlement**.

22 2. The **Court** has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and has
23 personal jurisdiction over the **Parties**. Venue is proper in this District.

24 3. This **Action** is provisionally certified as a class action for the purposes of
25 settlement only pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e). The
26 **Class** is defined as follows:

27 [A]ny and all persons in the United States who purchased a **Fat PS3** in the United
28 States between November 1, 2006 and April 1, 2010 from an authorized retailer for
family, personal, and/or household use and who: (1) used the **Other OS**

1 functionality; (2) knew about the **Other OS** functionality; or (3) contends or
2 believes that he or she lost value or desired functionality or was otherwise injured
3 as a consequence of **Firmware Update 3.21** and/or the disablement of **Other OS**
4 functionality in the **Fat PS3**.

5 Excluded from the **Class** are: (a) any persons who are employees, directors, officers, and agents
6 of **SCEA** or its subsidiaries and affiliated companies; (b) any persons who timely and properly
7 exclude themselves from the **Settlement**; and (c) the **Court**, the **Court's** immediate family, and
8 **Court** staff.

9 4. Certification of the **Class** shall be solely for settlement purposes and without
10 prejudice to the **Parties** in the event the **Settlement** is not finally approved by this **Court** or
11 otherwise does not take effect.

12 5. In support of this **Preliminary Approval Order**, the **Court** conditionally and
13 preliminarily finds that: (a) the **Class Members** are so numerous that joinder of all **Class**
14 **Members** is impracticable; (b) there are questions of law and fact common to the **Class**
15 **Members**, each of whom could have asserted the types of claims raised in the **Action**, and these
16 questions predominate over any questions affecting individual **Class Members**; (c) the named
17 **Class Representatives'** claims are typical of the claims of the **Class Members**; (d) the named
18 **Class Representatives** and **Class Counsel** identified below are able to adequately represent the
19 **Class Members**; and (e) class-wide treatment of the disputes raised in the **Action** is superior to
20 other available methods for adjudicating the controversy.

21 6. The **Court** preliminarily approves the proposed **Settlement** as fair, reasonable,
22 and adequate, entered into in good faith, free of collusion, and within the range of possible
23 judicial approval.

24 7. The **Court** appoints the following as **Class Counsel**: James J. Pizzirusso of
25 Hausfeld LLP, Gordon M. Fauth of Finkelstein Thompson LLP, and Kathleen V. Fisher of Calvo
26 Fisher & Jacob LLP.

27 8. The **Court** appoints **Plaintiffs** Anthony Ventura, Jason Baker, James Girardi,
28 Derek Alba, and Jonathan Huber as **Class Representatives** for the **Class**.

9. The **Court** directs the parties to select a **Settlement Administrator** to carry out

1 all duties and responsibilities of the **Settlement Administrator** specified in the **Settlement**.

2 10. The **Court** approves the program for disseminating notice to the **Class** set forth in
3 the **Settlement** (the “**Notice Program**”). The **Court** approves the form and content of the
4 proposed forms of notice in the forms attached to the **Settlement Agreement** as Exhibits 4 and
5 6. The **Court** finds that the proposed forms of notice are clear and readily understandable by
6 **Class Members**. The **Court** finds that the **Notice Program**, including the proposed forms of
7 notice, constitutes the best notice practicable under the circumstances, constitutes valid, due, and
8 sufficient notice to the **Class** in full compliance with the requirements of applicable law,
9 including Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States
10 Constitution, and is the only notice to the **Class** of the **Settlement** that is required.

11 11. The **Court** approves the form and content of the proposed **Claim Form**, in the
12 form attached to the **Settlement Agreement** as Exhibit 1, and approves the procedures set forth
13 in the **Settlement** for **Class Members** to submit **Claims**.

14 12. The **Parties** acknowledge that **SCEA** has prepared an electronic database that is
15 reasonably calculated to include the email address(es) of all the **Class Members** known by
16 **SCEA** through its PlayStation Network Database as of the date of **Preliminary Approval**, for
17 the **Settlement Administrator’s** use in disseminating notice and processing **Claims**. Pursuant
18 to the terms of the **Settlement**, within fourteen (14) days of the **Preliminary Approval Order**,
19 **SCEA** shall update the content of the previously prepared database.

20 13. The “**Notice Date**” shall be forty-five (45) days following the entry of this Order.

21 14. By no later than the **Notice Date**, the **Settlement Administrator** shall send the
22 **Short Form Notice**, substantially in the form attached to the **Settlement Agreement** as Exhibit
23 6 and in the form approved by the **Court**, to **Class Members** via email for those **Class**
24 **Members** for whom an email address is available, along with a link to the **Settlement Website**.
25 The subject line for all emails covered by this paragraph shall be: “Important - Notice of New
26 Class Action Settlement Regarding PlayStation 3 ‘Other OS’ Function.”

27 15. The **Settlement Administrator** shall provide one follow-up round of e-mail
28 notice to those **Class Members** who have not submitted **Claims** and for whom the **Settlement**

1 **Administrator** did not receive a bounce-back in response to the first round of email notice.

2 16. By no later than the **Notice Date**, the **Settlement Administrator** shall post the
3 **Long Form Notice**, in the form approved by the **Court**, on the **Settlement Website**.

4 17. As soon as practicable following the entry of the **Preliminary Approval Order**
5 and, in all events, by no later than the **Notice Date**, the **Settlement Administrator** shall cause
6 the **Short Form Notice** to be published in the online publications agreed upon by the **Parties**.

7 18. The **Settlement Administrator** shall use the Internet website, appearing at
8 www.otherossettlement.com ("**Settlement Website**"), where **Class Members** can obtain further
9 information about the terms of the **Settlement**, their rights, important dates and deadlines, and
10 related information. **Class Members** shall also be able to submit a **Claim Form** electronically
11 via the **Settlement Website**. The **Settlement Website** shall include, in PDF format, the Second
12 Amended Complaint ("**SAC**"), the **Settlement Agreement**, the Motion for **Preliminary**
13 **Approval**, the **Preliminary Approval Order**, the **Class Notice**, any papers filed in support of
14 **Final Approval** of the **Settlement**, **Class Counsel's Application for Attorneys' Fees and Costs**
15 (after it is filed), the **Final Approval Order** (after it is entered), and other case documents as
16 agreed upon by the **Parties** and/or required by the **Court** and shall be operational and live on the
17 date the **Settlement Administrator** begins emailing notice. The **Settlement Website** shall be
18 optimized for mobile display. The **Settlement Administrator** shall maintain the **Settlement**
19 **Website** as operational and shall not take it down until two hundred (200) days after the
20 **Effective Date**. Within five (5) business days after the **Settlement Website** is taken down, the
21 **Settlement Administrator** shall transfer ownership of the URL for the **Settlement Website** to
22 **SCEA**.

23 19. The **Settlement Administrator** shall establish and maintain a toll-free telephone
24 number ("**Toll-Free Number**") where **Class Members** can call to request a copy of the
25 **Settlement Agreement**, a **Claim Form**, or any other information concerning the **Settlement** or
26 the **Settlement Agreement**.

27 20. By no later than fifteen (15) days after the **Objection/Exclusion Date**, the
28 **Settlement Administrator** shall provide to the **Parties** proof of the extent and effectiveness of

1 **Class Notice.**

2 21. **Class Members** who wish to submit a **Claim** shall have the option of submitting
3 **Claim Forms** online via the **Settlement Website** or by mail. **Claim Forms** submitted online
4 must be submitted by no later than the **Claims Deadline** (ninety (90) days following the **Notice**
5 **Date**). **Claim Forms** submitted by mail must be postmarked no later than the **Claims Deadline**.

6 22. By no later than ten (10) days after the **Claims Deadline**, the **Settlement**
7 **Administrator**, using the information submitted by **Class Members**, shall create and provide to
8 **Class Counsel** and **SCEA's Counsel** a complete and final list of **Valid Claimants** that includes
9 each member's name and PlayStation Network Sign-In ID, PlayStation Network Online ID
10 and/or serial number as provided.

11 23. Any **Class Member** who wishes to be excluded from the **Class** must email or
12 mail a written request for exclusion to the **Settlement Administrator** at the email address or
13 mailing address provided in the **Class Notice**, postmarked no later than the **Opt-out Deadline**
14 (ninety(90) days following the **Notice Date**), and: (a) must contain the name and address of the
15 person to be excluded; (b) if applicable, must contain the name and address of any person
16 claiming to be legally entitled to submit an exclusion request on behalf of the **Class Member**
17 and the basis for such legal entitlement; (c) must be mailed by First Class U.S. Mail, proper
18 postage prepaid, to the **Settlement Administrator** at the specified mailing address; (d) must be
19 submitted or postmarked on or before the **Opt-out Deadline**; (e) should include the serial
20 number of the **Fat PS3** that he or she purchased, the PlayStation Network Sign-In ID used for
21 that console before April 1, 2010 or the PlayStation Network Online ID used for that console
22 before April 1, 2010; and (f) must be personally signed and clearly indicate that he/she wants to
23 be excluded from the **Class**. So-called "mass" or "class" opt-outs shall not be allowed.

24 24. If the **Settlement** is finally approved and becomes effective, any **Class Member**
25 who does not send a timely and valid request for exclusion shall be a **Settlement Class Member**
26 and shall be bound by all subsequent proceedings, orders, and judgments in the **Action**,
27 including, but not limited to, the **Release**, even if he or she has litigation pending or
28 subsequently initiates litigation against **SCEA** relating to the claims and transactions released in

1 the **Action**.

2 25. Any **Class Member** or person legally entitled to act on his or her behalf may
3 object to the fairness, reasonableness, or adequacy of the **Settlement**, to **Class Counsel's**
4 Request for **Attorneys' Fees and Costs** ("**Fee Application**"), and/or the Request for **Service**
5 **Awards** for the **Plaintiffs**. To be valid, any objection must be made in writing, must be mailed
6 to the **Settlement Administrator** at the address provided in the **Class Notice**, postmarked no
7 later than the **Objection Deadline** (ninety (90) days following the **Notice Date**), and must
8 include the following: (a) the name of the **Action** (*In re Sony PS3 "Other OS" Litigation*, No.
9 10-CV-01811-YGR); (b) the objector's full name, address, and telephone number; (c) if
10 applicable, the name and address of any person claiming to be legally entitled to object on behalf
11 of a **Class Member** and the basis of such legal entitlement; (d) all grounds for the objection; (e)
12 the serial number of the **Fat PS3** that he or she purchased, the PlayStation Network Sign-In ID
13 used for that console before April 1, 2010 or the PlayStation Network Online ID used for that
14 console before April 1, 2010; (f) whether the objector is represented by counsel and, if so, the
15 identity of such counsel, and all previous objections filed by the objector and their counsel
16 within the last two years; and (g) the objector's signature.

17 26. Any **Class Member** who submits a timely and valid written objection may appear
18 at the **Fairness Hearing**, either in person or through personal counsel hired at the **Class**
19 **Member's** own personal expense. Any **Class Member** who does not submit a timely and valid
20 objection shall be deemed to have waived all objections and shall forever be foreclosed from
21 making any objection to the fairness, adequacy, or reasonableness of the **Settlement** and any
22 **Final Approval Order** and **Final Judgment** entered approving it, **Class Counsel's Fee**
23 **Application**, or any Request for **Service Awards** for the **Plaintiffs**.

24 27. No later than two (2) days after the **Objection Deadline**, the **Settlement**
25 **Administrator** shall provide to **Class Counsel** and **SCEA's Counsel** all objections submitted
26 by **Class Members**, including any related correspondence.

27 28. The **Settlement Administrator** shall no later than ten (10) days after the **Opt-**
28 **Out** or **Exclusion Deadline** provide to **Class Counsel** and **SCEA's Counsel** a complete and

1 final list of **Class Members** who submitted requests to exclude themselves from the **Class**,
2 including any related correspondence.

3 29. All costs associated with the administration of the **Settlement**, distribution of
4 **Class Notice**, and any other tasks assigned to the **Settlement Administrator** by the **Settlement**,
5 by this **Preliminary Approval Order**, by **SCEA** and the **Class Counsel's** mutual agreement in
6 writing, or by this **Court** shall be paid from the **Settlement Funds**.

7 30. The **Court** directs that the **Fairness Hearing** be scheduled for _____,
8 2017, at __o'clock __.m. to assist the **Court** in determining whether the **Settlement** should be
9 finally approved as fair, reasonable, and adequate to the **Settlement Class Members**; whether
10 **Final Judgment** should be entered dismissing the **Action** with prejudice; whether **Class**
11 **Counsel's Fee Application** should be approved; and whether any Request for **Service Awards**
12 for the **Plaintiffs** should be approved.

13 31. The **Parties** shall file any motions in support of **Final Approval** of the
14 **Settlement** by no later than _____. **Class Counsel** shall file their **Fee Application** and
15 any Request for **Service Awards** for the **Plaintiffs** by no later than _____. After it is
16 filed, **Class Counsel's Fee Application** and Request for **Service Awards** for the **Plaintiffs** shall
17 be posted on the **Settlement Website**.

18 32. The **Parties** shall file any responses to any **Class Member** objections, and any
19 reply papers in support of **Final Approval** of the **Settlement** or **Class Counsel's Fee**
20 **Application** and Request for **Service Awards** for the **Plaintiffs**, by no later than _____.

21 33. The **Court** reserves the right to modify the date of the **Fairness Hearing** and
22 related deadlines set forth herein. In the event the **Fairness Hearing** is moved, the new date and
23 time shall be promptly posted on the **Settlement Website** by the **Settlement Administrator**.

24 34. This Order shall become null and void and shall be without prejudice to the rights
25 of the **Parties**, all of whom shall be restored to their respective positions as they existed
26 immediately before the **Court** entered this Order, if: (a) the **Settlement** is not finally approved
27 by the **Court**, or does not become final, pursuant to the terms of the **Settlement**; (b) the
28 **Settlement** is terminated in accordance with the **Settlement**; or (c) the **Settlement** does not

1 become effective pursuant to the terms of the **Settlement** for any other reason.

2 35. If the **Settlement** does not become final and effective pursuant to the terms of the
3 **Settlement**, the **Class Representatives**, the **Class Members**, and **SCEA** shall be returned to
4 their respective statuses as of the date immediately prior to the execution of the **Settlement**
5 **Agreement**, and this **Preliminary Approval Order** shall have no force or effect, and neither
6 this **Preliminary Approval Order** nor the **Settlement** shall be construed or used as an
7 admission, concession, or declaration by or against **SCEA** of any fault, wrongdoing, breach, or
8 liability, or be construed or used as an admission, concession, or declaration by or against any of
9 the **Plaintiffs** or **Class Members** that their claims lack merit or that the relief requested is
10 inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he,
11 she, or it may have in this **Action** or in any other lawsuit, and it shall not be admissible in
12 evidence, or usable for any purpose whatsoever in the **Action**, any proceeding between the
13 **Parties**, or in any action related to the **Released Claims** or otherwise involving the **Parties**,
14 **Class Members**, or any **Released Party**.

15 36. Pending the final determination of whether the **Settlement** should be approved,
16 all proceedings in this **Action**, except as may be necessary to implement the **Settlement** or
17 comply with the terms of the **Settlement**, are hereby stayed.

18 37. Pending the final determination of whether the **Settlement** should be approved,
19 **Plaintiffs** and each **Class Member**, and any person purportedly acting on behalf of any **Class**
20 **Member(s)**, are hereby enjoined from commencing, pursuing, maintaining, enforcing, or
21 prosecuting, either directly or indirectly, any **Released Claims** in any judicial, administrative,
22 arbitral or other forum, against any of the **Released Parties**, provided that this injunction shall
23 not apply to the claims of any **Class Members** who have timely and validly requested to be
24 excluded from the **Class**. Such injunction shall remain in force until **Final Settlement Date** or
25 until such time as the **Parties** notify the **Court** that the **Settlement** has been terminated. This
26 injunction is necessary to protect and effectuate the **Settlement**, this **Preliminary Approval**
27 **Order**, and this **Court's** authority regarding the **Settlement**, and is ordered in aid of this
28 **Court's** jurisdiction and to protect its judgments.

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38. **Class Counsel, SCEA, and the Settlement Administrator** are directed to carry out their obligations under the **Settlement** and this **Preliminary Approval Order**.

IT IS SO ORDERED.

Dated: _____

By: _____
HON. YVONNE GONZALES ROGERS
District Judge
U.S. District Court, Northern District of California

EXHIBIT 6

**IF YOU PURCHASED A SONY "FAT" PLAYSTATION® 3 COMPUTER
ENTERTAINMENT CONSOLE BETWEEN NOVEMBER 1, 2006 AND APRIL 1, 2010, A CLASS
ACTION SETTLEMENT MAY AFFECT YOU**

**The sole purpose of this notice is to inform you of the settlement so that
you can decide what to do.**

A proposed settlement has been reached in the nationwide class action lawsuit, *In re Sony PS3 "Other OS" Litigation*, United States District Court, Northern District of California, Case No. C-10-1811 (YGR). This lawsuit challenges the decision to disable the Other OS functionality from "Fat" PS3 computer entertainment consoles through Firmware Update 3.21, released on April 1, 2010. "Fat" PS3 consoles were consoles manufactured with the ability to install a Linux operating system as an alternative to the game operating system. Sony Computer Entertainment America LLC ("SCEA") (n/k/a Sony Interactive Entertainment America LLC) is the defendant and denies all allegations.

If the settlement is approved and you are a Class Member, you may be eligible to submit a claim for benefits. You are a Class Member if you purchased a Fat PS3 between November 1, 2006 and April 1, 2010 from an authorized retailer for family, personal and/or household use and you: (1) used the **Other OS** functionality; (2) knew about

the **Other OS** functionality; or (3) contend or believe that you lost value or desired functionality or were otherwise injured as a consequence of **Firmware Update 3.21** and/or the disablement of **Other OS** functionality in the **Fat PS3**. Class Members will be eligible to receive a cash payment up to \$65 per valid claim, the exact amount of which will depend on how many valid claims are submitted. The deadline for submitting claim forms is [DATE]. Claim forms are available on the Settlement Website or may be obtained by calling the Settlement Administrator.

You may choose to exclude yourself from the settlement by sending your name, address, PS3 serial number, PlayStation Network Sign-In ID and/or PlayStation Network Online ID, along with a statement that you wish to be excluded to the Settlement Administrator at the address below. If you exclude yourself, you will not receive anything but will retain your right to sue. You may also object to the settlement with the option to appear at the final approval hearing with your own attorney at your cost. If you do nothing or object to the settlement, you will be bound by its terms and cannot later sue SCEA. All exclusion requests and objections must be submitted by [DATE].

If you filed a claim with the Settlement Administrator for a benefit under the previous proposed settlement of the above-referenced class action litigation, you do not need to resubmit. To check on the status of your previous claim, please contact the Settlement Administrator.

Please contact the Settlement Administrator at the below address or visit: www.XXXXXXX.com for more information. The Settlement Administrator is:

[insert address]

PLEASE DO NOT CONTACT SCEA OR THE COURT FOR INFORMATION

EXHIBIT 7

LIST OF FAT PS3 MODEL NUMBERS

CECHA01

CECHB01

CECHE01

CECHE01MG

CECHE11

CECHG01

CECHG11

CECHH01

CECHH01MG

CECHH11

CECHK01

CECHK11

CECHL01

CECHL11

CECHP01

EXHIBIT 8

GENERAL RELEASE OF ALL CLAIMS BY PLAINTIFF JAMES GIRARDI

1. In consideration of the benefits provided for in the Class Action Settlement Agreement (“SETTLEMENT AGREEMENT”), James Girardi (“Girardi”), on his own behalf and on behalf of his heirs, assigns, executors, administrators, predecessors, and successors, hereby completely releases and forever discharges Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC (“SCEA”), and its current and former parents, subsidiaries, divisions, and current and former affiliated individuals and entities, successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, distributors, retailers, developers and/or licensees and each and all of their respective officers, partners, directors, servants, agents, shareholders, investors, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (“RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensations, claims, suits, causes of action, attorneys’ fees, obligations, or liabilities of any nature, type, or description, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state, or local law, statute, ordinance, code, contract, common law, or any other source which Girardi has, may now have, or has ever had against any of the RELEASED PARTIES, or any of them arising from or in any way connected with Girardi’s purchase of a Fat PS3 and/or any other relationship with SCEA, as of the date of Girardi’s execution of this General Release including, but not limited to claims that were or could have been asserted in or arising from or that may have arisen from the same facts alleged in *In re Sony PS3 “Other OS” Litigation*, Case No. 4:10-cv-01811 YGR, currently pending in the District Court for the Northern District of California (the “ACTION”). This General Release covers all statutory, common law, constitutional, and other claims, including but not limited to:

- (a) Any and all claims concerning the advertising of SCEA’s Other OS functionality;
- (b) Any and all claims that arise out of, refer to or in any way relate to the disabling of the Other OS functionality in the Fat PS3;
- (c) Any and all claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), or any other applicable law or statute related to SCEA’s advertising of the Other OS functionality;
- (d) Any and all claims that SCEA’s advertising or representations regarding SCEA’s Other OS functionality constituted a fraudulent, unlawful, unfair, or deceptive business practice, were unconscionable, violated consumer protection statutes, and/or constituted a breach of contract and/or breach of the covenant of good faith and fair dealing or unjust enrichment; and/or
- (e) Any and all claims concerning any fact or circumstance that relates to SCEA’s advertising or representations regarding its Other OS functionality (collectively, the “RELEASED CLAIMS”).

This General Release described herein covers, includes, and is intended to include all remedies that could be sought for the RELEASED CLAIMS including, but not limited to, statutory, constitutional, contractual, and common law claims for injunctive relief, declaratory relief, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, disgorgement, or equitable relief against SCEA.

2. **Waiver of Unknown Claims.** Girardi has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Girardi hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this General Release includes within its effect claims and causes of action which Girardi does not know or suspect to exist in his favor at the time of his execution hereof and if the facts and circumstances relating in any manner to the RELEASED CLAIMS are hereafter found to be other than or different from the facts now believed to be true, this General Release shall remain effective.

3. Girardi warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.


4. The Settlement Administrator of the Stipulation of Class Action Settlement and Release, executed in the ACTION, shall issue Girardi a Form 1099 reflecting the payment of any settlement benefits described in the SETTLEMENT AGREEMENT.

5. Girardi agrees that he alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any settlement benefits.

6. Girardi and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this General Release is entirely contingent upon final approval of the SETTLEMENT executed in the ACTION. If the SETTLEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither an appeal of, a modification of nor a reversal on appeal of a FEE AND EXPENSE AWARD or a SERVICE AWARD described in the SETTLEMENT AGREEMENT shall constitute grounds for cancellation or termination of this General Release, however.

Dated: 8/24, 2017

James Girardi



GENERAL RELEASE OF ALL CLAIMS BY PLAINTIFF JONATHAN HUBER

1. In consideration of the benefits provided for in the Class Action Settlement Agreement (“SETTLEMENT AGREEMENT”), Jonathan Huber (“Huber”), on his own behalf and on behalf of his heirs, assigns, executors, administrators, predecessors, and successors, hereby completely releases and forever discharges Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC (“SCEA”), and its current and former parents, subsidiaries, divisions, and current and former affiliated individuals and entities, successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, distributors, retailers, developers and/or licensees and each and all of their respective officers, partners, directors, servants, agents, shareholders, investors, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (“RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensations, claims, suits, causes of action, attorneys’ fees, obligations, or liabilities of any nature, type, or description, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state, or local law, statute, ordinance, code, contract, common law, or any other source which Huber has, may now have, or has ever had against any of the RELEASED PARTIES, or any of them arising from or in any way connected with Huber’s purchase of a Fat PS3 and/or any other relationship with SCEA, as of the date of Huber’s execution of this General Release including, but not limited to claims that were or could have been asserted in or arising from or that may have arisen from the same facts alleged in either *In re Sony PS3 “Other OS” Litigation*, Case No. 4:10-cv-01811 YGR, currently pending in the District Court for the Northern District of California (the “ACTION”) and/or *Huber v. Sony Computer Entertainment America LLC*, Northern District of California, Case No. 10-cv-2213 (May 21, 2010). This General Release covers all statutory, common law, constitutional, and other claims, including but not limited to:

- (a) Any and all claims concerning the advertising of SCEA’s Other OS functionality;
- (b) Any and all claims that arise out of, refer to or in any way relate to the disabling of the Other OS functionality in the Fat PS3;
- (c) Any and all claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), or any other applicable law or statute related to SCEA’s advertising of the Other OS functionality;
- (d) Any and all claims that SCEA’s advertising or representations regarding SCEA’s Other OS functionality constituted a fraudulent, unlawful, unfair, or deceptive business practice, were unconscionable, violated consumer protection statutes, and/or constituted a breach of contract and/or breach of the covenant of good faith and fair dealing or unjust enrichment; and/or
- (e) Any and all claims concerning any fact or circumstance that relates to SCEA’s advertising or representations regarding its Other OS functionality (collectively, the “RELEASED CLAIMS”).

This General Release described herein covers, includes, and is intended to include all remedies that could be sought for the RELEASED CLAIMS including, but not limited to, statutory, constitutional, contractual, and common law claims for injunctive relief, declaratory relief, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, disgorgement, or equitable relief against SCEA.

2. **Waiver of Unknown Claims.** Huber has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Huber hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this General Release includes within its effect claims and causes of action which Huber does not know or suspect to exist in his favor at the time of his execution hereof and if the facts and circumstances relating in any manner to the RELEASED CLAIMS are hereafter found to be other than or different from the facts now believed to be true, this General Release shall remain effective.

3. Huber warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

4. The Settlement Administrator of the Stipulation of Class Action Settlement and Release, executed in the ACTION, shall issue Huber a Form 1099 reflecting the payment of any settlement benefits described in the SETTLEMENT AGREEMENT.

5. Huber agrees that he alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any settlement benefits.

6. Huber and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this General Release is entirely contingent upon final approval of the SETTLEMENT executed in the ACTION. If the SETTLEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither an appeal of, a modification of nor a reversal on appeal of a FEE AND EXPENSE AWARD or a SERVICE AWARD described in the SETTLEMENT AGREEMENT shall constitute grounds for cancellation or termination of this General Release, however.

Dated: August 24, 2017

Jonathan Huber



Exhibit 8

GENERAL RELEASE OF ALL CLAIMS BY PLAINTIFF ANTHONY VENTURA

1. In consideration of the benefits provided for in the Class Action Settlement Agreement (“SETTLEMENT AGREEMENT”), Anthony Ventura (“Ventura”), on his own behalf and on behalf of his heirs, assigns, executors, administrators, predecessors, and successors, hereby completely releases and forever discharges Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC (“SCEA”), and its current and former parents, subsidiaries, divisions, and current and former affiliated individuals and entities, successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, distributors, retailers, developers and/or licensees and each and all of their respective officers, partners, directors, servants, agents, shareholders, investors, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (“RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensations, claims, suits, causes of action, attorneys’ fees, obligations, or liabilities of any nature, type, or description, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state, or local law, statute, ordinance, code, contract, common law, or any other source which Ventura has, may now have, or has ever had against any of the RELEASED PARTIES, or any of them arising from or in any way connected with Ventura’s purchase of a Fat PS3 and/or any other relationship with SCEA, as of the date of Ventura’s execution of this General Release including, but not limited to claims that were or could have been asserted in or arising from or that may have arisen from the same facts alleged in either *In re Sony PS3 “Other OS” Litigation*, Case No. 4:10-cv-01811 YGR, currently pending in the District Court for the Northern District of California (the “ACTION”) and/or *Anthony Ventura v. Sony Computer Entertainment America Inc.*, United States District Court, Northern District of California, Case No. CV 10 1811 EMC. This General Release covers all statutory, common law, constitutional, and other claims, including but not limited to:

- (a) Any and all claims concerning the advertising of SCEA’s Other OS functionality;
- (b) Any and all claims that arise out of, refer to or in any way relate to the disabling of the Other OS functionality in the Fat PS3;
- (c) Any and all claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), or any other applicable law or statute related to SCEA’s advertising of the Other OS functionality;
- (d) Any and all claims that SCEA’s advertising or representations regarding SCEA’s Other OS functionality constituted a fraudulent, unlawful, unfair, or deceptive business practice, were unconscionable, violated consumer protection statutes, and/or constituted a breach of contract and/or breach of the covenant of good faith and fair dealing or unjust enrichment; and/or
- (e) Any and all claims concerning any fact or circumstance that relates to SCEA’s advertising or representations regarding its Other OS functionality (collectively, the “RELEASED CLAIMS”).

This General Release described herein covers, includes, and is intended to include all remedies that could be sought for the RELEASED CLAIMS including, but not limited to, statutory, constitutional, contractual, and common law claims for injunctive relief, declaratory relief, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, disgorgement, or equitable relief against SCEA.

2. **Waiver of Unknown Claims.** Ventura has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Ventura hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this General Release includes within its effect claims and causes of action which Ventura does not know or suspect to exist in his favor at the time of his execution hereof and if the facts and circumstances relating in any manner to the RELEASED CLAIMS are hereafter found to be other than or different from the facts now believed to be true, this General Release shall remain effective.

3. Ventura warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

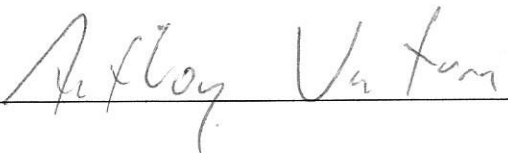
4. The Settlement Administrator of the Stipulation of Class Action Settlement and Release, executed in the ACTION, shall issue Ventura a Form 1099 reflecting the payment of any settlement benefits described in the SETTLEMENT AGREEMENT.

5. Ventura agrees that he alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any settlement benefits.

6. Ventura and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this General Release is entirely contingent upon final approval of the SETTLEMENT executed in the ACTION. If the SETTLEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither an appeal of, a modification of nor a reversal on appeal of a FEE AND EXPENSE AWARD or a SERVICE AWARD described in the SETTLEMENT AGREEMENT shall constitute grounds for cancellation or termination of this General Release, however.

Dated: 8/29/2017

Anthony Ventura



GENERAL RELEASE OF ALL CLAIMS BY PLAINTIFF JASON BAKER

1. In consideration of the benefits provided for in the Class Action Settlement Agreement (“SETTLEMENT AGREEMENT”), Jason Baker (“Baker”), on his own behalf and on behalf of his heirs, assigns, executors, administrators, predecessors, and successors, hereby completely releases and forever discharges Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment America LLC (“SCEA”), and its current and former parents, subsidiaries, divisions, and current and former affiliated individuals and entities, successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint venturers, distributors, retailers, developers and/or licensees and each and all of their respective officers, partners, directors, servants, agents, shareholders, investors, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, and insurers (“RELEASED PARTIES”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensations, claims, suits, causes of action, attorneys’ fees, obligations, or liabilities of any nature, type, or description, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state, or local law, statute, ordinance, code, contract, common law, or any other source which Baker has, may now have, or has ever had against any of the RELEASED PARTIES, or any of them arising from or in any way connected with Baker’s purchase of a Fat PS3 and/or any other relationship with SCEA, as of the date of Baker’s execution of this General Release including, but not limited to claims that were or could have been asserted in or arising from or that may have arisen from the same facts alleged in either *In re Sony PS3 “Other OS” Litigation*, Case No. 4:10-cv-01811 YGR, currently pending in the District Court for the Northern District of California (the “ACTION”) and/or *Baker, et al. v. Sony Computer Entertainment America LLC*, Northern District of California, Case No. 10-cv-1697 (April 30, 2010). This General Release covers all statutory, common law, constitutional, and other claims, including but not limited to:

- (a) Any and all claims concerning the advertising of SCEA’s Other OS functionality;
- (b) Any and all claims that arise out of, refer to or in any way relate to the disabling of the Other OS functionality in the Fat PS3;
- (c) Any and all claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), or any other applicable law or statute related to SCEA’s advertising of the Other OS functionality;
- (d) Any and all claims that SCEA’s advertising or representations regarding SCEA’s Other OS functionality constituted a fraudulent, unlawful, unfair, or deceptive business practice, were unconscionable, violated consumer protection statutes, and/or constituted a breach of contract and/or breach of the covenant of good faith and fair dealing or unjust enrichment; and/or
- (e) Any and all claims concerning any fact or circumstance that relates to SCEA’s advertising or representations regarding its Other OS functionality (collectively, the “RELEASED CLAIMS”).

This General Release described herein covers, includes, and is intended to include all remedies that could be sought for the RELEASED CLAIMS including, but not limited to, statutory, constitutional, contractual, and common law claims for injunctive relief, declaratory relief, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, disgorgement, or equitable relief against SCEA.

2. **Waiver of Unknown Claims.** Baker has read Section 1542 of the Civil Code of the

State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Baker hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, whether known or unknown, against the RELEASED PARTIES. Accordingly, this General Release includes within its effect claims and causes of action which Baker does not know or suspect to exist in his favor at the time of his execution hereof and if the facts and circumstances relating in any manner to the RELEASED CLAIMS are hereafter found to be other than or different from the facts now believed to be true, this General Release shall remain effective.

3. Baker warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.
4. The Settlement Administrator of the Stipulation of Class Action Settlement and Release, executed in the ACTION, shall issue Baker a Form 1099 reflecting the payment of any settlement benefits described in the SETTLEMENT AGREEMENT.
5. Baker agrees that he alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any settlement benefits.
6. Baker and the RELEASED PARTIES expressly agree that any and all force and effectiveness of this General Release is entirely contingent upon final approval of the SETTLEMENT executed in the ACTION. If the SETTLEMENT does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither an appeal of, a modification of nor a reversal on appeal of a FEE AND EXPENSE AWARD or a SERVICE AWARD described in the SETTLEMENT AGREEMENT shall constitute grounds for cancellation or termination of this General Release, however.

Dated: 8-23, 2017

Jason Baker

A handwritten signature in black ink, appearing to read "Jason Baker", is written over a horizontal line.

EXHIBIT C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SONY PS3 “OTHER OS”) Case No. 3:10-cv-01811-YGR
LITIGATION)
) **DECLARATION OF STEPHEN J.**
) **CIRAMI REGARDING NOTICE AND**
) **SETTLEMENT ADMINISTRATION**
)
)
)

I, STEPHEN J. CIRAMI, declare and state as follows:

1. I am the Executive Vice President and Chief Operating Officer of Garden City Group, LLC (“GCG”). Over the past 13 years at GCG, I have handled a wide range of historic complex legal administrations, including mass tort settlements, human rights administrations, product liability settlements, antitrust matters, DOJ disgorgements, SEC Fair Funds, and ERISA, wage and hour, and insurance-related matters. I have particular expertise identifying solutions for cases involving high volume and inaccurate or dated data, and those requiring specialized class member identification demands. Attached as Exhibit A is my curriculum vitae.

2. The following statements are based on my personal knowledge and information provided by other experienced GCG employees working under my supervision, and if called on

1 to do so, I could and would testify competently thereto.

2 3. GCG is a recognized leader in providing legal notice and administrative services.
3 GCG has hundreds of employees, including former class action attorneys, software engineers,
4 call center professionals, in-house legal advertising specialists, and graphic artists with extensive
5 website design experience, among other professionals. GCG routinely develops and executes
6 notice programs and administrations in a wide variety of class action and mass action contexts,
7 with subject matters including, but not limited to, products liability, consumer, mass tort,
8 antitrust, labor and employment, ERISA, civil and human rights, insurance, securities fraud, and
9 healthcare. Our team has served as administrator for over 3,400 cases during GCG's 30 plus
10 year history. Additionally, GCG has mailed hundreds of millions of notices, disseminated over
11 375 million emails, handled over 35 million phone calls, designed and launched over 1,000 case
12 websites, and distributed over \$72 billion in benefits. Attached hereto as Exhibit A is a firm
13 resume.
14

15
16 4. GCG was previously engaged by the Parties to develop the Notice Plan and
17 administer the Settlement that was preliminarily approved on September 8, 2016, but ultimately
18 not finally approved. Based on GCG's knowledge of and experience with the prior Settlement,
19 GCG was recently re-engaged by the Parties to develop and implement a proposed legal notice
20 program ("the Notice Program") to provide notice of the proposed revised settlement ("Revised
21 Settlement") with Sony Computer Entertainment America LLC, currently known as Sony
22 Interactive Entertainment America LLC ("SCEA").

23 5. As more fully described below, the Notice Program will provide notice of the
24 Revised Settlement to Members of the Class. This Declaration describes and details the
25 proposed Notice Program and why it is the most appropriate and practicable under the
26 circumstances.
27

1 **PROPOSED NOTICE PROGRAM**

2 6. According to the Second Amended Consolidated Class Action Complaint
3 (“Complaint”) submitted to the United States District Court Northern District of California on
4 May 29, 2014 and provided by Counsel to GCG, the lawsuit alleges that on April 1, 2010 SCEA
5 released a software update for the PlayStation® 3 (“PS3”) that disabled the Other OS
6 functionality that had allowed the use of Linux as an alternative operating system.

7 7. Based on the information in the Revised Settlement Agreement, we understand
8 the class definition to be:

9 Any and all persons who purchased a Fat PS3 in the United States between November 1,
10 2006 through April 1, 2010 from an authorized retailer for family, personal, and/or
11 household use and who: (1) used the Other OS functionality; (2) knew about the Other
12 OS functionality; or (3) contends or believes that he or she lost value or desired
13 functionality or was otherwise injured as a consequence of Firmware Update 3.21 and/or
14 the disablement of Other OS functionality in the Fat PS3.

13 **STRATEGY AND TARGET AUDIENCE DEFINITION**

14 8. GCG adheres to the highest communication and outreach standards, in part, by
15 structuring its notice programs on data provided by standard methodology that is used
16 throughout the advertising industry and which has been embraced by courts in the United States.
17 The design of the Notice Program is consistent with the U.S. Supreme Court’s guidance in
18 *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) and *Kumho Tire Co. v.*
19 *Carmichael*, 526 U.S. 137 (1999), and uses industry-accepted methodology that can be tested by
20 peers. Specifically, GCG designed the Notice Program using a method accepted within the
21 advertising industry to understand the target audience, including Class Members, by examining
22 their demography and media consumption habits. This Declaration describes the methodology
23 for understanding the target audience and how the most appropriate media was selected to reach
24 them.

25 9. In order to design an appropriate and efficient national legal notice program, GCG
26 utilizes the syndicated research bureaus GfK Mediamark Research, Inc. (“GfK MRI”) and
27 comScore. GfK MRI is a nationally syndicated research tool. It is the leading supplier of multi-

1 media audience research, and provides comprehensive reports on demographic, lifestyle, product
2 usage and media exposure. GfK MRI conducts more than 26,000 personal interviews annually
3 to gather their information, and is used by more than 450 advertising agencies as the basis for the
4 majority of media and marketing campaigns. comScore is a global Internet information provider
5 on which leading companies and advertising agencies rely for consumer behavior insight and
6 Internet usage data. comScore maintains a proprietary database of more than 2 million
7 consumers who have given comScore permission to monitor their browsing and transaction
8 behavior, including online and offline purchasing. comScore panelists also participate in survey
9 research that captures and integrates their attitudes and intentions.

10 10. GCG is able to measure and report to the Court what percentage of the target
11 audience is estimated to be reached by the Notice Program and how many times the target
12 audience will have the opportunity to see the notice. In advertising, this is commonly referred to
13 as a reach and frequency analysis. Reach refers to the estimated percentage of the unduplicated
14 audience exposed to the notice. Frequency, in turn, refers to how many times, on average, the
15 target audience had the opportunity to view the notice. Reach and frequency calculations are
16 used by advertising and communications firms worldwide and have become a critical element to
17 help provide the basis for determining adequacy of notice in class action cases.

18 11. Taking into account the Class described above, GCG believes that the best
19 qualitative target for this case is “Adults 18 years of age or older that own a PlayStation or web-
20 enabled console” (“Target Audience”).

21 **PLAIN LANGUAGE**

22 12. I have reviewed the Summary Notice written by the Parties that is attached to the
23 Revised Settlement Agreement, and find that it is written in a plain language style. Plain
24 language is simply a more conversational form of communication, which is used, for example,
25 when reporting the news. The concept, now integrated into legal notice practice, is one that has
26 received note from various national and international authorities and organizations, including the
27 Federal Judicial Center in the United States.

1 **OVERVIEW OF NOTICE PROGRAM**

2 13. In order to reach a significant number of potential people covered by the Revised
3 Settlement affected and using the information we understand about the Class, GCG proposes to
4 use a variety of communication methods in the Notice Program. Using a multifaceted approach,
5 engineered through a combination of internet advertising and social media engagement, the
6 Notice Program is specifically designed to notify persons covered by the Revised Settlement.

7 The elements in this multilayered and comprehensive Notice Program include:

- 8 (1) direct email notice to class members known through the PlayStation Network
9 database for whom contact information is available;
- 10 (2) targeted banner notice on English and Hispanic websites and networks
11 including Yahoo, Google, Pulpo, and Twitch.tv;
- 12 (3) social ads on Facebook, Instagram, and Twitter;
- 13 (4) Gmail promoted ads;
- 14 (5) notice by press release (if agreed to by the parties);
- 15 (6) print notice in USA Today, California edition to satisfy CLRA;
- 16 (7) a settlement website; and,
- 17 (8) a toll-free information telephone number.

18 14. The Notice Program as described in more detail below is estimated to reach
19 approximately 78% of the Target Audience with an average frequency of 2.65. GCG believes
20 the Notice Program satisfies due process standards and will provide adequate notice to Class
21 Members based on the documents provided by Counsel. The Notice Program is consistent with
22 Fed R. Civ. P. 23 and provides the best practicable notice to reach Class Members affected by
23 the Complaint.

24 **NOTICE PROGRAM**

25 15. **Direct Notice:** GCG will format the Summary Notice for electronic distribution
26 by email to Class Members for whom an email address is available (“Email Notice”). The Email
27 Notice will provide Class Members with a link to the Settlement Website. GCG will follow

1 standard email protocols, including utilizing “unsubscribe” links and GCG’s contact information
2 in the Email Notice. The contents of the Email Notice will be reviewed to minimize SPAM
3 triggers and also will be run through a set of sender authentication mechanisms, such as SPF
4 (Sender Policy Framework), DomainKeys, DKIM (DomainKeys Identified Mail), Barracuda,
5 and SpamAssassin, to evaluate the probability that the email will encounter spam filtering issues.
6 Finally, the Email Notice will be distributed at gradually increasing levels to maximize the
7 deliverability rate to the available Class Members’ email addresses.

8 16. As stated in my Declaration Regarding Notice and Settlement Administration
9 dated June 17, 2017 and previously filed with the Court, as a result of the mailing GCG
10 conducted in connection with the prior settlement, GCG has 6,956,093 valid emails out of the
11 total class of 12,225,679. Accordingly, GCG estimates the direct email notice will reach
12 approximately 56.9% of the Class.

13 17. Given our prior experience with the Class, we have revised our approach to target
14 members of the Class and also people who look like PS3 or gaming customers and are likely to
15 be customers based on similar demographics and media habits. This revised approach to
16 targeting those class members is described below.

17 18. **Paid Banner Advertisements:** Internet advertising has become a standard
18 component in legal notice programs. The Internet has proven to be an efficient and cost-
19 effective method to target and provide measurable reach of persons covered by a settlement.
20 According to GfK MRI Research, 99.4% of the Target Audience has used the internet in the last
21 30 days, therefore we propose notifying Class Members by running banner ads on select
22 websites where Class Members visit regularly and utilizing networks based on cost efficiency,
23 timing, and their contribution to the overall reach of the target. Banner advertisements are
24 image-based graphic displays that are used in legal noticing to notify people of a settlement
25 relevant to them. The text of the banner advertisement, which the Parties will review in advance
26 of publication, will allow users to self-identify themselves as potential Class Members and
27 directly link them to the settlement website for more information.

1 19. The selected sites, digital networks, Gmail, and the social networking sites
2 Facebook, Instagram, and Twitter, were selected to reach a great number of Class Members
3 efficiently.

4 20. The banner advertisements will run for 6 weeks throughout the U.S. With one
5 exception, the ads will also link directly to the settlement website. Gmail ads will link to a full
6 page of graphics and content which will have a link to the claim website. A list of the
7 recommended websites included in the Notice Program is shown below.

Digital Program		
Media Vehicle	Website/Network	Impressions
Display Ads	Yahoo, Google, Pulpo, Twitch	124,611,111
Social Ads	Facebook, Twitter, Instagram	62,200,000
Gmail Ads	Gmail	2,000,000
Total Estimated Impressions:		188,811,111

16
17 21. **Display Ads:** These ads will run over several digital networks including Google,
18 Yahoo Twitch.tv, and Pulpo. These combined ad networks cover 92% of the U.S. population.
19 Ads will run on thousands of English and Hispanic websites, including Gamespot, CNET,
20 Gizmodo, ESPN. Twitch.tv is the largest game-themed website in United States.

21 22. **Social Ads:** Ads will appear on the leading group of social network sites.
22 Facebook/Instagram/Twitter combined cover over 220 million active users in the U.S. GCG will
23 target users by behavior and by type of purchase (gaming). As an additional recommendation if
24 met with Counsel's approval, GCG will upload the mailing list to target those individuals as well
25 as a look-alike audience. A look alike audience is created using data provided to GCG by
26 claimants in order to target users who share online data with our Target Audience. We can then
27 serve ads to the look-alike audience, thus expanding our target audience.

1 23. Twitter provides a cost effective approach to expand the messaging of the
2 settlement while driving quality traffic to the settlement website with less wasted impressions.
3 Members of our Target Audience are 127% more likely than the average adult 18+ to use
4 Twitter. Similarly popular is Facebook. According to comScore, 83.6% of the Target Audience
5 uses Facebook. For Facebook and Instagram, the ads will provide an option for users to click
6 and the site presents to the user a custom form that is pre-filled with available info of the targeted
7 individual.

8 24. **Gmail Ads:** Gmail promotions are an inexpensive way to reach a broad range of
9 people. With these ads, GCG will target by interests, behavior and by email content (i.e.
10 Playstation Network). This is another opportunity to create a look-alike audience, as described
11 above, and expand the possibility of reaching Class Members.

12 25. **Press Release:** If agreed to by the Parties, a national press release of up to 600
13 words will be distributed over PR Newswire's US1 and National Hispanic Newslines. The US1
14 release will be issued broadly to more than 15,000 media outlets, including newspapers,
15 magazines, national wire services, television, radio and online media in all 50 states. The
16 Hispanic newslines reaches over 7,000 U.S. Hispanic media contacts including online placement
17 of approximately 100 Hispanic websites nationally.

18 26. **Print Notice:** To satisfy the requirements of the Consumer Legal Remedies Act
19 (CLRA), insertions will run one time per week for four (4) weeks in the California edition of
20 USA Today at an approximate ad size of 1/4 page.

21 27. **Website:** Importantly, the Notice Program includes an official website dedicated
22 to Settlement information such as Settlement Class Member rights, dates, and deadlines.
23 Additionally, the website address will be displayed in the trade publication notices, and will be
24 activated promptly following approval of the Notice Program. The Settlement Website will
25 contain additional information and important Court documents such as the Revised Settlement
26 Agreement, the Preliminary Approval Order, the Long-Form Settlement Notice, and the Claim
27 Form. It will also include procedural information regarding the status of the Court-approval

1 process and how to file a claim. Further, Class Members will be able to submit a Claim Form on
2 the Settlement Website using the online portal. The Settlement Website will also provide
3 instructions for Claimants wishing to exclude themselves from or object to the Revised
4 Settlement.

5 28. **Toll-Free Telephone Hotline:** GCG will maintain a toll-free telephone line
6 where callers may obtain information and have questions answered about the Revised
7 Settlement. The telephone number will be prominently displayed in the Email Notice and the
8 Summary Notice, as well as on the Settlement Website.

9 **CONCLUSION**

10 29. This method of focused notice dissemination is a reasonable and targeted
11 approach to provide effective notice in this case. We expect the revised claims process coupled
12 with the Notice Program to result in additional claims being filed. The Notice Program is
13 estimated to reach at least 78% of Class Members with an average frequency of 2.65. This
14 methodology ensures the highest standard of individual notice to Class Members and is the best
15 notice practicable under the circumstances. Please note the previous Notice Program for this
16 matter was estimated to reach at least 77% of Class Members and eventually reached 86% of
17 Class Members. It is possible that the reach for this Notice Program will similarly exceed 78%.

18 I declare under penalty of perjury that the foregoing is true and correct to the best of my
19 knowledge and belief.

20 Executed this 1st day of September, 2017 in New York, New York.

21
22 

23
24 _____
25 Stephen J. Cirami

Exhibit A

Stephen Cirami

Executive Vice President and Chief Operating Officer

Executive Summary:

Stephen Cirami is a nationally renowned expert on all aspects of class action legal notice and administration. Over the past 12 years at GCG he has effectuated hundreds of notice programs, and has helped design dozens of others in his handling a wide range of historic complex legal administrations. Mr. Cirami consults frequently with plaintiff and defense counsel, as well as government agencies, to design notice programs that meet their specific needs and circumstances, and has particular expertise identifying solutions for cases requiring specialized class member identification demands.

Notice Programs Effectuated:

- ***In Re Royal Ahold Securities and ERISA Litigation***; Case No. 03-MD-01539-CCB; District of Maryland Northern Division; Hon. Catherine C. Blake; Settlement Fund - \$1.1 billion

“Yes, I agree. I think, Mr. Cirami, you certainly have been doing everything you can to reach as many claimants as possible, and I appreciate it. It’s a very difficult, very difficult and time-consuming process.”

“I appreciate the team of ... settlement administrators ... who have managed this process so well.”

-- Hon. Catherine C. Blake, U.S. District Judge, District of Maryland

- ***In Re Initial Public Offering Securities Litigation***; Case No. 21-MC-92; Southern District of New York; Hon. Shira Scheindlin; Settlement Fund - \$586 million

GCG is complying with its typical procedures for claims administration and is going above and beyond its usual practices due to the size of the class in this action.”

-- Hon. Shira A. Scheindlin, U.S. District Judge, Southern District of New York

- ***In Re WorldCom Securities Litigation***; Case No. 02-cv-3288; Southern District of New York; Hon. Denise L. Cote; Settlement Fund - \$6.13 billion

- Notice materials disseminated to nearly 4 million recipients three times due to various partial settlements.

- ***In Re Tyco International LTD., Securities Litigation***; Case No. 02-md-1335; District of New Hampshire; Hon. Paul Barbadoro; Settlement Fund - \$3.2 billion

- ***In Re Bank of America Corp. Securities Derivative & ERISA Litigation***; Case No. 09-md-2058; Southern District of New York; Hon. P. Kevin Castel; Settlement Fund - \$2.425 billion

- 3.4 million notices mailed

- ***In Re Nortel Securities Litigation I and II***; Case No. 01-cv-1855; Southern District of New York; Hon. Richard M. Berman and *In Re Nortel Securities Litigation II*; Case No. 05-MD-1659; Southern District of New York; Hon. Loretta A. Preska Settlement Fund - \$2.4 billion

- More than 2.3 million notices mailed to class members in the United States, Canada and around the globe.

- ***In Re Citigroup Inc. Bond Litigation***; Case No. 08-cv-9522; Southern District of New York; Hon. Sidney H. Stein; Settlement Fund - \$730 million

- ***In re Wachovia Preferred Securities and Bond/Notes Litigation***; Case No. 09-cv-6351; Southern District of New York; Hon. Richard J. Sullivan; Settlement Fund - \$627 million

- ***In re Citigroup Inc. Securities Litigation***; Case No. 07-cv-9901; Southern District of New York; Hon. Sidney H. Stein; Settlement Fund - \$590 million

- Mailed more than 2.4 million claim packets

- ***In Re Lucent Technologies, Inc. Securities Litigation***; Case No. 00-cv-621; District of New Jersey; Hon. Joel A. Pisano; Settlement Fund - \$517 million

- ***Countrywide MBS Settlement***; Case No. 10-cv-00302; Central District of California; Hon.



CONTACT

P. 631-470-6838

1985 Marcus Ave
Lake Success, NY 11042

stephen.cirami
@gardencitygroup.com

Admissions:

Florida State Bar
New York State Bar

Education:

Duke University, J.D.,
cum laude

State University of New York
at Albany, B.A., Psychology

Mariana R. Pfaelzer; Settlement Fund - \$500 million

- *In Re Bristol Myers Squibb Securities Litigation (2004 litigation)*; Case No. 02-cv-2251; Southern District of New York; Hon. Loretta A. Preska; Settlement Fund - \$750 million
- *In Re Delphi Corporation Securities Litigation*; Case No. 05-MD-1725; Eastern District of Michigan Southern Division; Hon. Gerald E. Rosen; Settlement Fund - \$295.1 million
- *In Re Global Crossing Ltd. Securities Litigation*; Case No. 02-cv-910; Southern District of New York; Hon. Gerald E. Lynch; Settlement Fund - \$446 million

Expert Witness:

- *Estate of Mikulski v. Cleveland Electric Illuminating Co., Estate of Mikulski v. Centerior Energy Corp. et al, Estate of Mikulski v. Toledo Edison Co.*
- Currently serving as an expert witness concerning the reasonable identification of class members, and notice and administration procedures.

Pre-settlement/Pre-notice Affidavits & Declarations:

- *In re Longtop Financial Technologies Limited Securities Litigation: Case No. 11-cv-3658-SAS; Southern District of New York; Hon. Shira A. Scheindlin; Settlement Fund - \$2.3 million*
- *In re HP Securities Litigation: Case No. 3:12-CV-05980-CRB; Northern District of California; Hon. Charles R. Breyer; Settlement Fund - \$100 million*
- *In re Bank of New York Mellon Corp. Forex Transactions Litigation: Case No. 12-MD-2335 (LAK) (JLC); Southern District of New York; Hon. Lewis A. Kaplan; Settlement Fund - \$335 million*
- *Bennett v. Sprint Nextel Corporation: Case No. 2:09-cv-02122-EFM-KMH; District of Kansas; Hon. Eric F. Melgren; Settlement Fund - \$131 million*
- *In re Prograf (Tacrolimus) Antitrust Litigation: Case No. MDL No. 22242; District of Massachusetts*
- *Erickson v. Corinthian Colleges, Inc.: Case No. 2:13-cv-07466-GHK-PJW; Central District of California; Hon. George H. King; Settlement Fund - \$3.5 million*

Speaking Engagements:

2014	<ul style="list-style-type: none"> • National Association of Attorneys General (NAAG) Fall Consumer Protection Seminar, Providence, Rhode Island • 6th Annual Conference on Global Investor Protection, Frankfurt, Germany
2013	<ul style="list-style-type: none"> • 5th Annual Conference on Global Investor Protection, Frankfurt, Germany
2011	<ul style="list-style-type: none"> • Hedge Funds Care Investor Conference, New York, NY
2010	<ul style="list-style-type: none"> • Securities Industry and Financial Markets Association (SIFMA) Securities Conference, New York, NY
2009	<ul style="list-style-type: none"> • Three separate European Institutional Investor Conferences <ul style="list-style-type: none"> ○ (Frankfurt, Germany; Paris, France; Zurich, Switzerland)
2007	<ul style="list-style-type: none"> • Bank Depository User Group (BDUG) Annual Conference, San Antonio, Texas

Continuing Legal Education Presentations:

- *Settlement Administration from the Plaintiffs' Perspective*
 - Motley Rice, September 24, 2014
 - Spector Roseman, July 10, 2014
 - Sussman Godfrey, August 6, 2014
- *Data Privacy and Protection in Legal Administrations*
 - Duane Morris, March 29, 2016

Articles:

- “The Lawdragon Lawyer Limelight: Stephen Cirami” – *Lawdragon*, April 2016
- "Thinking Down the Road: 5 Things to Consider When Negotiating a Class Action Settlement," *American Lawyer and Corporate Counsel*, 2014
- “Potential Pitfalls of Class Action Notice and Claims Administration in the 21st Century” – *Practicing Law Institute: Class Action Litigation Manual*, 2012

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SONY PS3 “OTHER OS”
LITIGATION

Case No. 10-CV-01811-YGR

**[PROPOSED] ORDER GRANTING
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

1 This matter came before the **Court** on **Plaintiffs'** Renewed Motion for **Preliminary**
2 **Approval of Class Settlement** and Certification of **Settlement Class**. The **Parties** have entered
3 into a **Settlement Agreement** on or about **August 24, 2017** (the "**Settlement**") which has been
4 filed with the Court and which, if approved, would resolve the above-captioned class action
5 lawsuit (the "**Action**" or the "Class Action Lawsuit"). Upon review and consideration of the
6 motion papers and the **Settlement** and all exhibits thereto, including the proposed forms of
7 notice to the **Class** and the proposed **Claim Form**, the **Court** finds that there is sufficient basis
8 for: (1) granting preliminary approval of the **Settlement**; (2) provisionally certifying the **Class**
9 for settlement purposes only; (3) appointing **Class Counsel** and **Plaintiffs** to represent the **Class**;
10 (4) approving the **Parties'** proposed notice program and forms of notice substantially similar to
11 those forms attached to the **Settlement** and directing that notice be disseminated to the **Class**
12 pursuant to the notice program provided in the **Settlement**; (5) approving the **Parties'** proposed
13 **Claim Form** and approving the procedures set forth in the **Settlement** for **Class Members** to
14 submit claims, exclude themselves from the **Class**, and object to the **Settlement**; (6) appointing a
15 **Settlement Administrator** to conduct the duties assigned to that position in the **Settlement**; and
16 (7) setting a hearing (the "**Fairness Hearing**") at which the **Court** will consider: (a) whether to
17 grant **Final Approval** of the **Settlement**; (b) **Class Counsel's** Application for **Attorneys' Fees**
18 **and Costs**; and (c) any Request for **Service Awards** for the **Plaintiffs**.

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

20 1. Capitalized terms not otherwise defined herein shall have the same meaning as set
21 forth in the **Settlement**.

22 2. The **Court** has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and has
23 personal jurisdiction over the **Parties**. Venue is proper in this District.

24 3. This **Action** is provisionally certified as a class action for the purposes of
25 settlement only pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e). The
26 **Class** is defined as follows:

27 [A]ny and all persons in the United States who purchased a **Fat PS3** in the United
28 States between November 1, 2006 and April 1, 2010 from an authorized retailer
for family, personal, and/or household use and who: (1) used the **Other OS**

1 functionality; (2) knew about the **Other OS** functionality; or (3) contends or
2 believes that he or she lost value or desired functionality or was otherwise injured
3 as a consequence of **Firmware Update 3.21** and/or the disablement of **Other OS**
4 functionality in the **Fat PS3**.

4 Excluded from the **Class** are: (a) any persons who are employees, directors, officers, and agents
5 of **SCEA** or its subsidiaries and affiliated companies; (b) any persons who timely and properly
6 exclude themselves from the **Settlement**; and (c) the **Court**, the **Court's** immediate family, and
7 **Court** staff.

8 4. Certification of the **Class** shall be solely for settlement purposes and without
9 prejudice to the **Parties** in the event the **Settlement** is not finally approved by this **Court** or
10 otherwise does not take effect.

11 5. In support of this **Preliminary Approval Order**, the **Court** conditionally and
12 preliminarily finds that: (a) the **Class Members** are so numerous that joinder of all **Class**
13 **Members** is impracticable; (b) there are questions of law and fact common to the **Class**
14 **Members**, each of whom could have asserted the types of claims raised in the **Action**, and these
15 questions predominate over any questions affecting individual **Class Members**; (c) the named
16 **Class Representatives'** claims are typical of the claims of the **Class Members**; (d) the named
17 **Class Representatives** and **Class Counsel** identified below are able to adequately represent the
18 **Class Members**; and (e) class-wide treatment of the disputes raised in the **Action** is superior to
19 other available methods for adjudicating the controversy.

20 6. The **Court** preliminarily approves the proposed **Settlement** as fair, reasonable,
21 and adequate, entered into in good faith, free of collusion, and within the range of possible
22 judicial approval.

23 7. The **Court** appoints the following as **Class Counsel**: James J. Pizzirusso of
24 Hausfeld LLP, Gordon M. Fauth of Finkelstein Thompson LLP, and Kathleen V. Fisher of Calvo
25 Fisher & Jacob LLP.

26 8. The **Court** appoints **Plaintiffs** Anthony Ventura, Jason Baker, James Girardi,
27 Derek Alba, and Jonathan Huber as **Class Representatives** for the **Class**.

28 9. The **Court** appoints Garden City Group, LLC to serve as the **Settlement**

1 **Administrator** and directs it to carry out all duties and responsibilities of the **Settlement**
2 **Administrator** specified in the **Settlement**.

3 10. The **Court** approves the program for disseminating notice to the **Class** set forth in
4 the **Settlement** (the “**Notice Program**”). The **Court** approves the form and content of the
5 proposed forms of notice in the forms attached to the **Settlement Agreement** as Exhibits 4 and
6 6. The **Court** finds that the proposed forms of notice are clear and readily understandable by
7 **Class Members**. The **Court** finds that the **Notice Program**, including the proposed forms of
8 notice, constitutes the best notice practicable under the circumstances, constitutes valid, due, and
9 sufficient notice to the **Class** in full compliance with the requirements of applicable law,
10 including Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States
11 Constitution, and is the only notice to the **Class** of the **Settlement** that is required.

12 11. The **Court** approves the form and content of the proposed **Claim Form**, in the
13 form attached to the **Settlement Agreement** as Exhibit 1, and approves the procedures set forth
14 in the **Settlement** for **Class Members** to submit **Claims**.

15 12. The **Parties** acknowledge that **SCEA** has already provided to the **Settlement**
16 **Administrator** an electronic database that is reasonably calculated to include the email
17 address(es) of all the **Class Members** known by **SCEA** through its PlayStation Network
18 Database as of the date of **Preliminary Approval**, for the **Settlement Administrator’s** use in
19 disseminating notice and processing **Claims**. Pursuant to the terms of the **Settlement**, within
20 fourteen (14) days of the **Preliminary Approval Order**, **SCEA** shall update the content of the
21 previously provided database.

22 13. The “**Notice Date**” shall be forty-five (45) days following the entry of this Order.

23 14. By no later than the **Notice Date**, the **Settlement Administrator** shall send the
24 **Short Form Notice**, substantially in the form attached to the **Settlement Agreement** as Exhibit
25 6 and in the form approved by the **Court**, to **Class Members** via email for those **Class**
26 **Members** for whom an email address is available, along with a link to the **Settlement Website**.
27 The subject line for all emails covered by this paragraph shall be: “Important - Notice of New
28 Class Action Settlement Regarding PlayStation 3 ‘Other OS’ Function.”

1 15. The **Settlement Administrator** shall provide one follow-up round of e-mail
2 notice to those **Class Members** who have not submitted **Claims** and for whom the **Settlement**
3 **Administrator** did not receive a bounce-back in response to the first round of email notice.

4 16. By no later than the **Notice Date**, the **Settlement Administrator** shall post the
5 **Long Form Notice**, in the form approved by the **Court**, on the **Settlement Website**.

6 17. As soon as practicable following the entry of the **Preliminary Approval Order**
7 and, in all events, by no later than the **Notice Date**, the **Settlement Administrator** shall cause
8 the **Short Form Notice** to be published in the online publications agreed upon by the **Parties**.

9 18. The **Settlement Administrator** shall use the Internet website, appearing at
10 www.otherossettlement.com ("**Settlement Website**"), where **Class Members** can obtain further
11 information about the terms of the **Settlement**, their rights, important dates and deadlines, and
12 related information. **Class Members** shall also be able to submit a **Claim Form** electronically
13 via the **Settlement Website**. The **Settlement Website** shall include, in PDF format, the Second
14 Amended Complaint ("**SAC**"), the **Settlement Agreement**, the Renewed Motion for
15 **Preliminary Approval**, the **Preliminary Approval Order**, the **Class Notice**, any papers filed
16 in support of **Final Approval** of the **Settlement**, **Class Counsel's** Application for **Attorneys'**
17 **Fees and Costs** (after it is filed), the **Final Approval Order** (after it is entered), and other case
18 documents as agreed upon by the **Parties** and/or required by the **Court** and shall be operational
19 and live on the date the **Settlement Administrator** begins emailing notice. The **Settlement**
20 **Website** shall be optimized for mobile display. The **Settlement Administrator** shall maintain
21 the **Settlement Website** as operational and shall not take it down until two hundred (200) days
22 after the **Effective Date**. Within five (5) business days after the **Settlement Website** is taken
23 down, the **Settlement Administrator** shall transfer ownership of the URL for the **Settlement**
24 **Website** to SCEA.

25 19. The **Settlement Administrator** shall establish and maintain a toll-free telephone
26 number ("**Toll-Free Number**") where **Class Members** can call to request a copy of the
27 **Settlement Agreement**, a **Claim Form**, or any other information concerning the **Settlement** or
28 the **Settlement Agreement**.

1 20. By no later than fifteen (15) days after the **Objection/Exclusion Date**, the
2 **Settlement Administrator** shall provide to the **Parties** proof of the extent and effectiveness of
3 **Class Notice**.

4 21. **Class Members** who wish to submit a **Claim** shall have the option of submitting
5 **Claim Forms** online via the **Settlement Website** or by mail. **Claim Forms** submitted online
6 must be submitted by no later than the **Claims Deadline** (ninety (90) days following the **Notice**
7 **Date**). **Claim Forms** submitted by mail must be postmarked no later than the **Claims Deadline**.

8 22. By no later than ten (10) days after the **Claims Deadline**, the **Settlement**
9 **Administrator**, using the information submitted by **Class Members**, shall create and provide to
10 **Class Counsel** and **SCEA's Counsel** a complete and final list of **Valid Claimants** that includes
11 each member's name and PlayStation Network Sign-In ID, PlayStation Network Online ID
12 and/or serial number as provided.

13 23. Any **Class Member** who wishes to be excluded from the **Class** must email or
14 mail a written request for exclusion to the **Settlement Administrator** at the email address or
15 mailing address provided in the **Class Notice**, postmarked no later than the **Opt-out Deadline**
16 (ninety(90) days following the **Notice Date**), and: (a) must contain the name and address of the
17 person to be excluded; (b) if applicable, must contain the name and address of any person
18 claiming to be legally entitled to submit an exclusion request on behalf of the **Class Member**
19 and the basis for such legal entitlement; (c) must be mailed by First Class U.S. Mail, proper
20 postage prepaid, to the **Settlement Administrator** at the specified mailing address; (d) must be
21 submitted or postmarked on or before the **Opt-out Deadline**; (e) should include the serial
22 number of the **Fat PS3** that he or she purchased, the PlayStation Network Sign-In ID used for
23 that console before April 1, 2010 or the PlayStation Network Online ID used for that console
24 before April 1, 2010; and (f) must be personally signed and clearly indicate that he/she wants to
25 be excluded from the **Class**. So-called "mass" or "class" opt-outs shall not be allowed.

26 24. If the **Settlement** is finally approved and becomes effective, any **Class Member**
27 who does not send a timely and valid request for exclusion shall be a **Settlement Class Member**
28 and shall be bound by all subsequent proceedings, orders, and judgments in the **Action**,

1 including, but not limited to, the **Release**, even if he or she has litigation pending or
2 subsequently initiates litigation against **SCEA** relating to the claims and transactions released in
3 the **Action**.

4 25. Any **Class Member** or person legally entitled to act on his or her behalf may
5 object to the fairness, reasonableness, or adequacy of the **Settlement**, to **Class Counsel's**
6 Request for **Attorneys' Fees and Costs** ("**Fee Application**"), and/or the Request for **Service**
7 **Awards** for the **Plaintiffs**. To be valid, any objection must be made in writing, must be mailed
8 to the **Settlement Administrator** at the address provided in the **Class Notice**, postmarked no
9 later than the **Objection Deadline** (ninety (90) days following the **Notice Date**), and must
10 include the following: (a) the name of the **Action** (*In re Sony PS3 "Other OS" Litigation*, No.
11 10-CV-01811-YGR); (b) the objector's full name, address, and telephone number; (c) if
12 applicable, the name and address of any person claiming to be legally entitled to object on behalf
13 of a **Class Member** and the basis of such legal entitlement; (d) all grounds for the objection; (e)
14 the serial number of the **Fat PS3** that he or she purchased, the PlayStation Network Sign-In ID
15 used for that console before April 1, 2010 or the PlayStation Network Online ID used for that
16 console before April 1, 2010; (f) whether the objector is represented by counsel and, if so, the
17 identity of such counsel, and all previous objections filed by the objector and their counsel
18 within the last two years; and (g) the objector's signature.

19 26. Any **Class Member** who submits a timely and valid written objection may appear
20 at the **Fairness Hearing**, either in person or through personal counsel hired at the **Class**
21 **Member's** own personal expense. Any **Class Member** who does not submit a timely and valid
22 objection shall be deemed to have waived all objections and shall forever be foreclosed from
23 making any objection to the fairness, adequacy, or reasonableness of the **Settlement** and any
24 **Final Approval Order** and **Final Judgment** entered approving it, **Class Counsel's Fee**
25 **Application**, or any Request for **Service Awards** for the **Plaintiffs**.

26 27. No later than two (2) days after the **Objection Deadline**, the **Settlement**
27 **Administrator** shall provide to **Class Counsel** and **SCEA's Counsel** all objections submitted
28 by **Class Members**, including any related correspondence.

1 28. The **Settlement Administrator** shall no later than ten (10) days after the **Opt-**
2 **Out** or **Exclusion Deadline** provide to **Class Counsel** and **SCEA’s Counsel** a complete and
3 final list of **Class Members** who submitted requests to exclude themselves from the **Class**,
4 including any related correspondence.

5 29. All costs associated with the administration of the **Settlement**, distribution of
6 **Class Notice**, and any other tasks assigned to the **Settlement Administrator** by the **Settlement**,
7 by this **Preliminary Approval Order**, by **SCEA** and the **Class Counsel’s** mutual agreement in
8 writing, or by this **Court** shall be paid from the **Settlement Funds**.

9 30. The **Court** directs that the **Fairness Hearing** be scheduled for _____,
10 2017, at ___o’clock __.m. to assist the **Court** in determining whether the **Settlement** should be
11 finally approved as fair, reasonable, and adequate to the **Settlement Class Members**; whether
12 **Final Judgment** should be entered dismissing the **Action** with prejudice; whether **Class**
13 **Counsel’s Fee Application** should be approved; and whether any Request for **Service Awards**
14 for the **Plaintiffs** should be approved.

15 31. The **Parties** shall file any motions in support of **Final Approval** of the
16 **Settlement** by no later than _____. **Class Counsel** shall file their **Fee Application** and
17 any Request for **Service Awards** for the **Plaintiffs** by no later than _____. After it is
18 filed, **Class Counsel’s Fee Application** and Request for **Service Awards** for the **Plaintiffs** shall
19 be posted on the **Settlement Website**.

20 32. The **Parties** shall file any responses to any **Class Member** objections, and any
21 reply papers in support of **Final Approval** of the **Settlement** or **Class Counsel’s Fee**
22 **Application** and Request for **Service Awards** for the **Plaintiffs**, by no later than _____.

23 33. The **Court** reserves the right to modify the date of the **Fairness Hearing** and
24 related deadlines set forth herein. In the event the **Fairness Hearing** is moved, the new date and
25 time shall be promptly posted on the **Settlement Website** by the **Settlement Administrator**.

26 34. This Order shall become null and void and shall be without prejudice to the rights
27 of the **Parties**, all of whom shall be restored to their respective positions as they existed
28 immediately before the **Court** entered this Order, if: (a) the **Settlement** is not finally approved

1 by the **Court**, or does not become final, pursuant to the terms of the **Settlement**; (b) the
2 **Settlement** is terminated in accordance with the **Settlement**; or (c) the **Settlement** does not
3 become effective pursuant to the terms of the **Settlement** for any other reason.

4 35. If the **Settlement** does not become final and effective pursuant to the terms of the
5 **Settlement**, the **Class Representatives**, the **Class Members**, and **SCEA** shall be returned to
6 their respective statuses as of the date immediately prior to the execution of the **Settlement**
7 **Agreement**, and this **Preliminary Approval Order** shall have no force or effect, and neither
8 this **Preliminary Approval Order** nor the **Settlement** shall be construed or used as an
9 admission, concession, or declaration by or against **SCEA** of any fault, wrongdoing, breach, or
10 liability, or be construed or used as an admission, concession, or declaration by or against any of
11 the **Plaintiffs** or **Class Members** that their claims lack merit or that the relief requested is
12 inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he,
13 she, or it may have in this **Action** or in any other lawsuit, and it shall not be admissible in
14 evidence, or usable for any purpose whatsoever in the **Action**, any proceeding between the
15 **Parties**, or in any action related to the **Released Claims** or otherwise involving the **Parties**,
16 **Class Members**, or any **Released Party**.

17 36. Pending the final determination of whether the **Settlement** should be approved,
18 all proceedings in this **Action**, except as may be necessary to implement the **Settlement** or
19 comply with the terms of the **Settlement**, are hereby stayed.

20 37. Pending the final determination of whether the **Settlement** should be approved,
21 **Plaintiffs** and each **Class Member**, and any person purportedly acting on behalf of any **Class**
22 **Member(s)**, are hereby enjoined from commencing, pursuing, maintaining, enforcing, or
23 prosecuting, either directly or indirectly, any **Released Claims** in any judicial, administrative,
24 arbitral or other forum, against any of the **Released Parties**, provided that this injunction shall
25 not apply to the claims of any **Class Members** who have timely and validly requested to be
26 excluded from the **Class**. Such injunction shall remain in force until **Final Settlement Date** or
27 until such time as the **Parties** notify the **Court** that the **Settlement** has been terminated. This
28 injunction is necessary to protect and effectuate the **Settlement**, this **Preliminary Approval**

1 **Order**, and this **Court's** authority regarding the **Settlement**, and is ordered in aid of this
2 **Court's** jurisdiction and to protect its judgments.

3 38. **Class Counsel, SCEA, and the Settlement Administrator** are directed to carry
4 out their obligations under the **Settlement** and this **Preliminary Approval Order**.

5 **IT IS SO ORDERED.**

6 Dated: _____

By: _____

7

HON. YVONNE GONZALES ROGERS

8

District Judge

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U.S. District Court, Northern District of California

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