

1 Rosemary M. Rivas (SBN 209147)
2 rrivas@finkelsteinthompson.com
3 **FINKELSTEIN THOMPSON LLP**
4 1 California Street, Suite 900
5 San Francisco, California 94111
6 Telephone: (415) 398-8700
7 Facsimile: (415) 398-8704

8 James Pizzirusso (*Pro Hac Vice*)
9 jpizzirusso@hausfeld.com
10 **HAUSFELD LLP**
11 1700 K. Street NW, Suite 650
12 Washington, DC 20006
13 Telephone: (202) 540-7200
14 Facsimile: (202) 540-7201

15 Kathleen V. Fisher
16 kfisher@calvofisher.com
17 **CALVO FISHER & JACOB LLP**
18 555 Montgomery Street, Suite 1155
19 San Francisco, California 94111
20 Telephone: (415) 374-8370
21 Facsimile: (415) 374-8373

22 *Interim Co-Lead Counsel for Plaintiffs*

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 In re SONY PS3 "OTHER OS"
27 LITIGATION

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

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

Date: July 19, 2016
Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1 – 4th floor

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

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

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

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

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

26 [A]ll persons in the United States who purchased a Fat PS3 in the United States
 27 between November 1, 2006 and April 1, 2010 from an authorized retailer for
 28 family, personal, and/or household use.

Consumer Class A is defined as follows:

[A]ll 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

1 family, personal and/or household use and who used the **Other OS** functionality
2 after installation of a Linux operating system on their **Fat PS3**.

3 **Consumer Class B** is defined as follows:

4 [A]ll persons in the United States who purchased a **Fat PS3** in the United States
5 between November 1, 2006 and April 1, 2010 from an authorized retailer for
6 family, personal, and/or household use.

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

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

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

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

26 7. The **Court** appoints the following as **Class Counsel**: James J. Pizzirusso of
27 Hausfeld LLP, Rosemary M. Rivas of Finkelstein Thompson LLP, and Kathleen V. Fisher of
28 Calvo Fisher & Jacob LLP.

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

1 9. The Court appoints Garden City Group, LLC to serve as the **Settlement**
2 **Administrator** and directs it to carry out all duties and responsibilities of the **Settlement**
3 **Administrator** specified in the **Settlement**.

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

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

16 12. Pursuant to the terms of the **Settlement**, to the extent SCEA has not already done
17 so, within fourteen (14) days after entry of this Order, SCEA shall provide to the **Settlement**
18 **Administrator** the Class Data for the **Settlement Administrator’s** use in disseminating notice
19 and processing **Claims**. The Class Data shall include an electronic list or database that is
20 reasonably calculated to include the email address(es) of all the **Class Members** known by
21 SCEA through its PlayStation Network 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. The subject line for all emails covered by
27 this paragraph shall be: “Important - Notice of Class Action Settlement Regarding PlayStation 3
28 ‘Other OS’ Function.”

1 15. The Settlement Administrator shall provide one follow-up round of e-mail notice
2 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 **Summary Notice** to be published in publication and media outlets as agreed upon by the
9 **Parties**.

10 18. The **Settlement Administrator** shall establish and maintain an Internet website
11 (“**Settlement Website**”) where **Class Members** can obtain further information about the terms
12 of this **Settlement**, their rights, important dates and deadlines, and related information. **Class**
13 **Members** shall also be able to submit a **Claim Form** electronically via the **Settlement Website**.
14 The **Settlement Website** shall include, in PDF format, the Second Amended Complaint
15 (“**SAC**”), the **Settlement**, the Motion for Preliminary Approval, the **Preliminary Approval**
16 **Order**, the **Class Notice**, any papers filed in support of final approval of the settlement, **Class**
17 **Counsel’s** application for attorneys’ fees and costs (after it is filed), the **Final Approval Order**
18 (after it is entered), and other case documents as agreed upon by the **Parties** and/or required by
19 the **Court** and shall be operational and live as of the date the **Settlement Administrator** begins
20 emailing notice. The **Settlement Website** shall be optimized for display on mobile phones. The
21 **Settlement Administrator** shall maintain the **Settlement Website** as operational and shall not
22 take it down until two hundred (200) days after the **Payment Date**. Within five (5) business
23 days after the **Settlement Website** is taken down, the **Settlement Administrator** shall transfer
ownership of the URL for the **Settlement Website** to SCEA.

24 19. The **Settlement Administrator** shall establish and maintain a toll-free telephone
25 number (“**Toll-Free Number**”) where **Class Members** can call to request a copy of the
26 **Settlement Agreement**, a **Claim Form**, or any other information concerning this **Settlement** or
27 the **Settlement Agreement**. The **Toll-Free Number** shall be operational and live by no later
28 than the date upon which the **Settlement Website** goes live.

1 20. By no later than seven (7) days after the **Objection/Exclusion Date**, the
2 **Settlement Administrator** shall file with the **Court** declaration(s) detailing the scope, methods,
3 and status of the **Notice Program**.

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** (forty-five (45) days following the
7 **Notice Date**). **Claim Forms** submitted by mail must be postmarked no later than the **Claims**
8 **Deadline**.

9 22. Any **Class Member** who wishes to be excluded from the **Class** must email or
10 mail a written request for exclusion to the **Settlement Administrator** at the address provided in
11 the **Class Notice**, postmarked no later than the **Opt-Out Deadline** (forty-five (45) days
12 following the **Notice Date**), and must include: (a) their full name and address and, if applicable,
13 the name and address of any person claiming to be legally entitled to submit an exclusion request
14 on behalf of the **Class Member** and the basis for such legal entitlement; (b) must be emailed to
15 the email address provided in the Class Notice or mailed by First Class U.S. Mail, proper
16 postage prepaid, to the **Settlement Administrator** at the specified mailing address as provided
17 in the Class Notice; (c) must be submitted or postmarked on or before the **Opt-Out Deadline**;
18 (d) the serial number of the Fat PS3 that he or she purchased and the PlayStation Network Sign-
19 In ID used for that console before April 1, 2010; and (e) a statement that is personally signed and
20 clearly indicates that he/she wants to be excluded from the **Class**. So-called “mass” or “class”
21 opt-outs shall not be allowed.

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

28 24. Any **Class Member** or person legally entitled to act on his or her behalf may
object to the **Settlement**, to **Class Counsel’s** request for attorneys’ fees and expenses (“**Fee**

1 **Application**”), and/or to any request for service awards for the **Plaintiffs**. To be considered, an
2 objection must be made in writing, must be mailed to the **Settlement Administrator** at the
3 address provided in the **Class Notice**, postmarked no later than the **Objection Deadline** (sixty
4 (60) days following the **Notice Date**), and must include the following: (a) the name of the
5 **Action** (*In re Sony PS3 Other “OS” Litigation*, No. C-10-1811 (YGR)); (b) the objector’s full
6 name, address, and telephone number; (c) if applicable, the name and address of any person
7 claiming to be legally entitled to object on behalf of a **Class Member** and the basis of such legal
8 entitlement; (d) all grounds for the objection; (e) the serial number of the **Fat PS3** that he or she
9 purchased and the PlayStation Network Sign-In ID used for that console before April 1, 2010; (f)
10 whether the objector is represented by counsel and, if so, the identity of such counsel, and all
11 previous objections filed by the objector and their counsel within the last two years; and (g) the
12 objector’s signature.

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

20 26. The **Settlement Administrator** shall two (2) days after the **Objection Deadline**
21 provide to **Class Counsel** and **SCEA’s Counsel** copies of any objections, including any related
22 correspondence.

23 27. The **Settlement Administrator** shall no later than ten (10) days after the **Opt-**
24 **Out or Exclusion Deadline** provide to **Class Counsel** and **SCEA’s Counsel** copies of any
25 requests for exclusion, including any related correspondence.

26 28. **SCEA** shall pay to the **Settlement Administrator** all reasonable costs associated
27 with the administration of the **Settlement**, distribution of **Class Notice**, and any other tasks
28 assigned to the **Settlement Administrator** by the **Settlement**, this **Preliminary Approval**
Order, by **SCEA** and the **Class Counsel’s** mutual agreement in writing, or by this **Court**.

1 29. The **Court** directs that the **Fairness Hearing** be scheduled for November 8, 2016
2 at 2:00 p.m. to assist the **Court** in determining whether the **Settlement** should be finally
3 approved as fair, reasonable, and adequate to the **Settlement Class Members**; whether **Final**
4 **Judgment** should be entered dismissing the **Action** with prejudice; whether **Class Counsel’s**
5 **Fee Application** should be approved; and whether any request for **Service Awards** for the
6 **Plaintiffs** should be approved.

7 30. The **Parties** shall file any motions in support of final approval of the **Settlement**
8 by no later September 13, 2016. **Class Counsel** shall file their **Fee Application** and any
9 Request for Plaintiff **Service Awards** by no later than September 13, 2016. After it is filed,
10 **Class Counsel’s Fee Application** and **Request for Plaintiff Service Awards** shall be posted on
11 the **Settlement Website**.

12 31. The **Parties** shall file any responses to any **Class Member** objections, and any
13 reply papers in support of final approval of the **Settlement** or **Class Counsel’s Fee Application**
14 and **Request for Plaintiff Service Awards**, by no later than October 25, 2016.

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

18 33. This **Order** shall become null and void and shall be without prejudice to the
19 rights of the **Parties**, all of whom shall be restored to their respective positions as they existed
20 immediately before the **Court** entered this Order, if: (a) the **Settlement** is not finally approved
21 by the **Court**, or does not become final, pursuant to the terms of the **Settlement**; (b) the
22 **Settlement** is terminated in accordance with the **Settlement**; or (c) the **Settlement** does not
23 become effective pursuant to the terms of the **Settlement** for any other reason.

24 34. If the **Settlement** does not become final and effective pursuant to the terms of the
25 **Settlement**, the **Class Representatives**, the **Class Members**, and **SCEA** shall be returned to
26 their respective statuses as of the date immediately prior to the execution of the **Settlement**
27 **Agreement**, and this **Preliminary Approval Order** shall have no force or effect, and neither
28 this **Preliminary Approval Order** nor the **Settlement** shall be construed or used as an
admission, concession, or declaration by or against **SCEA** of any fault, wrongdoing, breach, or

1 liability, or be construed or used as an admission, concession, or declaration by or against any of
 2 the **Plaintiffs** or **Class Members** that their claims lack merit or that the relief requested is
 3 inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he,
 4 she, or it may have in this **Action** or in any other lawsuit, and it shall not be admissible in
 5 evidence, or usable for any purpose whatsoever in the **Action**, any proceeding between the
 6 **Parties**, or in any action related to the **Released Claims** or otherwise involving the **Parties**,
 7 **Class Members**, or any **Released Party**.

8 35. Pending the final determination of whether the **Settlement** should be approved,
 9 all proceedings in this **Action**, except as may be necessary to implement the **Settlement** or
 10 comply with the terms of the **Settlement**, are hereby stayed.

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

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

24 38. The following chart summarizes the dates and deadlines set by this Order:

Date	Event
Fourteen (14) days after entry of Preliminary Approval Order issued	Deadline for SCEA to provide last known email addresses of Class Members known to SCEA through its PlayStation Network Database to Settlement Administrator

1 2 3 4	Forty-five (45) days after entry of Preliminary Approval Order	Notice Date ; deadline for Settlement Administrator to send Short Form Class Notice to Class Members via email along with a link to the Settlement Website and deadline for Settlement Administrator to post Long Form Notice on Settlement Website
5 6	Ten (10) days after the Claims Deadline	Settlement Administrator to provide to Class Counsel and SCEA's Counsel a final list of Class Members that made claims (regardless of validity of claims)
7	Forty-five (45) days after Notice Date	Claims Deadline, Objection Deadline and Opt-Out Deadline or Exclusion Deadline
8 9	Ten (10) Days after the Opt-Out Deadline	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
10 11	Two (2) days after the Objection Deadline	Settlement Administrator shall provide to Class Counsel and SCEA's Counsel all objections submitted by Class Members .
12 13 14	Twenty (20) days after Objection Deadline	Class Counsel shall file with the Court any and all objections to the Agreement redacted in accordance with ¶ 97 of the Agreement and/or to Class Counsel's Application for Attorneys' Fees and Expenses and Request for Service Awards
15	September 13, 2016	Deadline for Class Counsel to file Application for Attorneys' Fees and Expenses and Request for Service Awards
16 17	Fifteen (15) days after notification from Settlement Administrator that more than three percent (3%) of the Class has requested exclusion	Deadline for SCEA to notify Class Counsel and the Court that it is terminating the Settlement
18 19	No later than twenty-one (21) days after receiving notice of an event prompting termination of the Settlement	Party exercising its right to terminate and withdraw from the Settlement must serve a signed writing on the other Party indicating termination and withdrawal
20 21	Sixty (60) days after the Effective Date	Class Counsel returns list of Class Members that made valid claims to Settlement Administrator
22	September 13, 2016	Deadline for Final Approval Motion and for the parties to provide any responses to Settlement Objections
23 24	November 8, 2016 at 2:00 p.m.	Final Approval Hearing Date
25 26 27 28	Effective Date	The date of entry of the Final Approval Order and Final Judgment if no objections are filed to the Settlement or if all objections are withdrawn prior to the Court ruling on them; or thirty-one (31) calendar days after the entry of the Final Approval Order and Final Judgment if objections are filed and overruled and no appeal is taken from the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Final Approval Order and/or Final Judgment ; or if a timely appeal is made, thirty-one (31) calendar days after the date any appeal is voluntarily dismissed; or if a timely appeal is made and heard, thirty-one (31) calendar days after the final resolution of that appeal or petitions for certiorari from the Final Approval and/or Final Judgment
Fourteen (14) days after the Effective Date	SCEA provides to the Settlement Administrator funds sufficient to pay valid Claims
Thirty (30) days after the Effective Date	Payment Date (i.e., Deadline for Settlement Administrator to Disburse Settlement Fund)
Two hundred (200) days after the Effective Date	Settlement Website taken down
Five (5) business days after Settlement Website is taken down	Settlement Administrator to transfer Settlement Website URL to SCEA
Two hundred and ten (210) days after the Effective Date .	Deadline for Settlement Administrator to 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

IT IS SO ORDERED.

Dated: _____

 YVONNE GONZALEZ ROGERS
 United States District Judge