

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SONY PS3 "OTHER OS"
LITIGATION

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

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

AS MODIFIED BY THE COURT

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 AS MODIFIED HEREIN**,
9 including the proposed forms of notice, constitutes the best notice practicable under the
10 circumstances, constitutes valid, due, and sufficient notice to the **Class** in full compliance with
11 the requirements of applicable law, including Federal Rule of Civil Procedure 23 and the Due
12 Process Clause of the United States Constitution, and is the only notice to the **Class** of the
13 **Settlement** that is required.

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

17 12. Pursuant to the terms of the **Settlement**, to the extent SCEA has not already done
18 so, within fourteen (14) days after entry of this Order, SCEA shall provide to the **Settlement**
19 **Administrator** the Class Data for the **Settlement Administrator’s** use in disseminating notice
20 and processing **Claims**. The Class Data shall include an electronic list or database that is
21 reasonably calculated to include the email address(es) of all the **Class Members** known by
22 SCEA through its PlayStation Network Database.

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

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

1 ‘Other OS’ Function.” The Short Form Notice shall note that exemplars of acceptable forms of
2 proof of use for each category in Consumer Class A are available on the Settlement Website.

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

6 16. By no later than the **Notice Date**, the **Settlement Administrator** shall post the
7 **Long Form Notice**, in the form approved by the **Court**, on the **Settlement Website**. The Long
8 Form Notice shall include exemplars of acceptable forms of proof of use for each category in
9 Consumer Class A.

10 17. As soon as practicable following the entry of the **Preliminary Approval Order**
11 and, in all events, by no later than the **Notice Date**, the **Settlement Administrator** shall cause
12 the **Summary Notice** to be published in publication and media outlets as agreed upon by the
13 **Parties**.

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

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

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

9 21. **Class Members** who wish to submit a **Claim** shall have the option of submitting
10 **Claim Forms** online via the **Settlement Website** or by mail. **Claim Forms** submitted online
11 must be submitted by no later than the **Claims Deadline** (forty five (45) days following the
12 **Notice Date**). **Claim Forms** submitted by mail must be postmarked no later than the **Claims**
13 **Deadline**. The **Settlement Administrator** shall track all claims determined not to have
14 submitted valid proof of use for **Consumer Class A**, the nature of the proof of use offered, and
15 the basis for determining the claim invalid in an “Invalid Claim Log.” No later than 30 days
16 after the **Claims Deadline**, the **Settlement Administrator** shall provide to the parties a
17 declaration including a narrative summary and explanation of the data, and a copy of the Invalid
18 Claim Log, which shall be filed with the **Court** as part of with the motion for final approval.

19 22. Any **Class Member** who wishes to be excluded from the **Class** must email or
20 mail a written request for exclusion to the **Settlement Administrator** at the address provided in
21 the **Class Notice**, postmarked no later than the **Opt-Out Deadline** (forty five (45) days
22 following the **Notice Date**), and must include: (a) their full name and address and, if applicable,
23 the name and address of any person claiming to be legally entitled to submit an exclusion request
24 on behalf of the **Class Member** and the basis for such legal entitlement; (b) must be emailed to
25 the email address provided in the Class Notice or mailed by First Class U.S. Mail, proper
26 postage prepaid, to the **Settlement Administrator** at the specified mailing address as provided
27 in the Class Notice; (c) must be submitted or postmarked on or before the **Opt-Out Deadline**;
28 (d) the serial number of the Fat PS3 that he or she purchased and the PlayStation Network Sign-
In ID used for that console before April 1, 2010; and (e) a statement that is personally signed and

1 clearly indicates that he/she wants to be excluded from the **Class**. So-called “mass” or “class”
2 opt-outs shall not be allowed.

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

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

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

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

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

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

11 29. The **Court** directs that the **Fairness Hearing** be scheduled for **January 24, 2017,**
12 **at 2:00 p.m.** to assist the **Court** in determining whether the **Settlement** should be finally
13 approved as fair, reasonable, and adequate to the **Settlement Class Members**; whether **Final**
14 **Judgment** should be entered dismissing the **Action** with prejudice; whether **Class Counsel's**
15 **Fee Application** should be approved; and whether any request for **Service Awards** for the
16 **Plaintiffs** should be approved.

17 30. The **Parties** shall file any motions in support of final approval of the **Settlement**
18 by no later than **December 20, 2016.** **Class Counsel** shall file their **Fee Application** and any
19 Request for Plaintiff **Service Awards** by no later than **December 20, 2016.** After it is filed,
20 **Class Counsel's Fee Application** and **Request for Plaintiff Service Awards** shall be posted on
21 the **Settlement Website**.

22 31. The **Parties** shall file any responses to any **Class Member** objections, and any
23 reply papers in support of final approval of the **Settlement** or **Class Counsel's Fee Application**
24 and **Request for Plaintiff Service Awards**, by no later than **January 10, 2017.**

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

28 33. This **Order** shall become null and void and shall be without prejudice to the
rights of the **Parties**, all of whom shall be restored to their respective positions as they existed

1 immediately before the **Court** entered this Order, if: (a) the **Settlement** is not finally approved
2 by the **Court**, or does not become final, pursuant to the terms of the **Settlement**; (b) the
3 **Settlement** is terminated in accordance with the **Settlement**; or (c) the **Settlement** does not
4 become effective pursuant to the terms of the **Settlement** for any other reason.

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

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

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

5 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
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
Forty-five (45) days after Notice Date	Claims Deadline, Objection Deadline and Opt-Out Deadline or Exclusion Deadline
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
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)
Two (2) days after the Objection Deadline	Settlement Administrator shall provide to Class Counsel and SCEA's Counsel all objections submitted by Class Members .
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
Fourteen (14) days prior to the Objection Deadline	Deadline for Class Counsel to file Application for Attorneys' Fees and Expenses and Request for Service Awards
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
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
Sixty (60) days after the Effective Date	Class Counsel returns list of Class Members that made valid claims to Settlement

1		Administrator
2	<u>December 20, 2016</u>	Deadline for Final Approval Motion and for the parties to provide any responses to Settlement Objections
3	<u>January 24, 2017 at 2:00 p.m.</u>	Final Approval Hearing Date
4	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 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
12	Fourteen (14) days after the Effective Date	SCEA provides to the Settlement Administrator funds sufficient to pay valid Claims
14	Thirty (30) days after the Effective Date	Payment Date (i.e., Deadline for Settlement Administrator to Disburse Settlement Fund)
15	Two hundred (200) days after the Effective Date	Settlement Website taken down
16	Five (5) business days after Settlement Website is taken down	Settlement Administrator to transfer Settlement Website URL to SCEA
17	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: September 8, 2016


 YVONNE GONZALEZ ROGERS
 United States District Judge