

1 James A. Quadra (SBN 131084)  
jquadra@calvoclark.com  
2 **CALVO & CLARK, LLP**  
3 One Lombard Street, Second Floor  
San Francisco, California 94111  
4 Telephone: (415) 374-8370  
Facsimile: (415) 374-8373

5  
6 Rosemary M. Rivas (SBN 209147)  
rrivas@finkelsteinthompson.com  
7 **FINKELSTEIN THOMPSON LLP**  
100 Bush Street, Suite 1450  
8 San Francisco, California 94104  
Telephone: (415) 398-8700  
9 Facsimile: (415) 398-8704

James Pizzirusso (Admitted *pro hac vice*)  
jpizzirusso@hausfeldllp.com  
**HAUSFELD LLP**  
1700 K. Street NW, Suite 650  
Washington, DC 20006  
Telephone: (202) 540-7200  
Facsimile: (202) 540-7201

10 *Interim Co-Lead Counsel for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**  
12  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 Case No. CV-10-1811-RS

15 In Re Sony PS3 "Other OS" Litigation

**NOTICE OF MOTION AND MOTION  
FOR ORDER: (1) COMPELLING  
DISCOVERY FROM DEFENDANT  
SCEA'S PARENT COMPANY; AND (2)  
ENTERING THE NORTHERN DISTRICT  
OF CALIFORNIA'S STANDARD  
STIPULATED PROTECTIVE ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

20 Date: February 9, 2011  
21 Time: 10:30 a.m.  
22 Judge: Magistrate Judge Edward M. Chen  
Courtroom: C, 15th Floor

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on February 9, 2011 at 10:30 a.m., or as soon as  
3 thereafter as the matter may be heard in this Court, Plaintiffs Anthony Ventura, Jonathan Huber,  
4 Antal Herz, Jason Baker, and Elton Stovell (collectively “Plaintiffs”) will and hereby do move  
5 for an Order: (1) Compelling Discovery from Defendant Sony Computer Entertainment LLC’s  
6 (“SCEA”) Parent Company, and (2) Entering the Northern District of California’s Standard  
7 Stipulated Protective Order.

8 Plaintiffs’ Motion is based on this Notice of Motion and accompanying Memorandum of  
9 Points and Authorities, the Declaration of Rosemary M. Rivas (“Rivas Decl.”), Plaintiffs’  
10 Request for Judicial Notice, all other pleadings and matters of record in this case, and such other  
11 evidence of which this Court may take judicial notice. A proposed order is included.

12 Pursuant to Fed. R. Civ. P. 26(c)(1) and Local Rule 37-1(a), Plaintiffs certify that they  
13 have met and conferred in good faith with SCEA’s counsel in an effort to resolve the dispute  
14 without court involvement, but were unable to reach an agreement. The parties have met and  
15 conferred in person, by telephone and through email on October 29, 2010, November 10, 2010,  
16 November 15, 2010, November 23, 2010, and December 1, 2010 as set forth in the  
17 accompanying Rivas Declaration.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **STATEMENT OF ISSUES TO BE DECIDED (Local Rule 7-4(a)(3))**

20 1. Whether Defendant Sony Computer Entertainment America (“SCEA”), which  
21 marketed and distributed the PlayStation 3 (designed and manufactured by SCEA’s parent, Sony  
22 Computer Entertainment, Inc. (“SCEI”)) is obligated to produce documents responsive to  
23 Plaintiffs’ First Request for Production of Documents that are located in Japan and in its parent’s  
24 possession, custody or control; and

25 2. Whether the Northern District of California’s Standard Stipulated Protective  
26 Order is appropriate for this class action case involving consumer claims for breach of warranty  
27 and false advertising, among other things.

1 **PRELIMINARY STATEMENT**

2 Defendant Sony Computer Entertainment America (“SCEA”), headquartered in  
3 California, is a wholly owned subsidiary of Sony Computer Entertainment, Inc. (“SCEI”).  
4 SCEA has recently informed Plaintiffs that while it oversaw the marketing and distribution of the  
5 Sony PlayStation 3 (“PS3”) throughout the United States and provided related customer support,  
6 its corporate parent, SCEI, is the entity that was responsible for the PS3’s design, including the  
7 decision to add and then remove the PS3’s “Other OS” function. As a result, SCEA has refused  
8 to produce responsive documents in this case, such as those relating to the decisions to include  
9 and later remove the “Other OS” feature, on the grounds that such information is within the  
10 possession, custody and control of its parent SCEI, which is located in Japan. At the same time,  
11 however, SCEA has asserted in its Motion to Dismiss and elsewhere that the Terms of Service  
12 governing the PS3 allowed it to remove this feature because of “security concerns.” Plaintiffs  
13 have no way of disputing this assertion without related discovery and thus requested that SCEA  
14 produce documents from SCEI, as well. SCEA refused.

15 As an initial matter, Plaintiffs dispute that SCEA does not have any documents itself  
16 related to this issue, but have no way of knowing as SCEA has not yet produced any documents  
17 in this case that it claims as “confidential.” Nevertheless, SCEA would only agree to produce  
18 responsive documents on this issue that it claims are exclusively in the possession, custody and  
19 control of its parent, SCEI, if Plaintiffs would agree to forever waive their right to name SCEI as  
20 a defendant in this litigation. Plaintiffs responded that they could only agree to such a proposal if  
21 SCEA agreed that SCEI’s conduct were imputed to SCEA; SCEA refused. SCEA’s proposal is  
22 unacceptable in light of the authority in this district holding that a subsidiary who is a party must  
23 produce documents in its parent’s possession if the relationship between the two suggests that the  
24 subsidiary has legal control of the documents as is the case here. Plaintiffs therefore seek an  
25 order from the Court that compels SCEA to produce documents responsive to Plaintiffs’  
26 discovery requests, regardless of whether that information is here or in Japan.



1 In a follow-up meet and confer letter dated November 10, 2010, Plaintiffs indicated that  
2 they were considering naming SCEI as a defendant or might move to compel if SCEA would not  
3 produce SCEI's documents. *Id.* at Ex. H. Plaintiffs also indicated that they might be willing to  
4 enter into a tolling agreement with SCEI whereby SCEI would not initially be named as a  
5 defendant and any potential statute of limitations would be tolled as of the date of the agreement.  
6 *Id.*

7 During a telephonic meet and confer on November 15, 2010, SCEA stated that it would  
8 be willing to enter into a stipulation whereby SCEA would agree to produce documents from its  
9 parent SCEI, but that with regard to depositions, Plaintiffs would need to follow the appropriate  
10 requirements for taking depositions in Japan under international discovery rules. Rivas Decl., ¶  
11 17. Plaintiffs asked SCEA to provide its proposal in writing. *Id.* After nearly three weeks of  
12 repeated requests that SCEA provide its proposal in writing, SCEA finally provided a written  
13 proposal on December 8, 2010. *Id.* at Ex. M. For the first time, however, SCEA was now  
14 insisting that Plaintiffs forever waive their right to name SCEI as a defendant in this litigation in  
15 exchange for SCEA agreeing to produce very limited discovery from SCEI related to two topics.  
16 *Id.* Plaintiffs sent a counter proposal asking for full discovery of SCEI and for SCEA to agree  
17 that SCEI's actions were imputed to it. SCEA rejected that counter proposal. *Id.* at Ex. N.

18 **B. The Protective Order**

19 Plaintiffs filed their Consolidated Class Action Complaint ("Complaint") on July 30,  
20 2010. *See* Dkt. No. 76. Plaintiffs raised the issue of a stipulated protective order with SCEA's  
21 counsel at the parties' in-person Rule 26(f) meeting on August 12, 2010. Rivas Decl., ¶ 2-4.  
22 SCEA stated that it would send Plaintiffs a draft of a proposed protective order within one week,  
23 and agreed to provide a redlined version of the Northern District of California's Sample  
24 Stipulated Protective Order. *Id.* at ¶ 4. SCEA did not provide a draft protective order as  
25 promised. *See id.* at Ex. J. Two months later, during the parties' in-person meet and confer on  
26 October 29, 2010, SCEA stated that it would not produce documents until the parties reached an  
27 agreement on a protective order. Rivas Decl., ¶ 12. SCEA would not even agree to produce  
28



1 advertisements and other marketing materials that were publicly disseminated. SCEA promised  
 2 again that it would send a draft protective order, but it did not. *See id.* at Ex. J. Plaintiffs  
 3 suggested that if SCEA produced documents, it would maintain such documents confidential  
 4 under the highest designation, “Attorneys’ Eyes Only,” until a protective order was entered by  
 5 the Court. *Id.* at ¶ 12.

6 On November 8, 2010, SCEA sent Plaintiffs a draft based on the Northern District of  
 7 California’s **Patent** Stipulated Protective Order. Rivas Decl., Ex. J. On November 10, 2010,  
 8 Plaintiffs explained in an email communication that given that this case is not a patent case, the  
 9 parties should adopt the Northern District’s Standard Protective Order. *Id.* During the parties’  
 10 meet and confer on November 15, 2010, Plaintiffs reiterated the same. *Id.* SCEA refused to  
 11 agree to the Northern District of California’s Standard Protective Order and reiterated its position  
 12 that it would not produce “confidential” documents until Plaintiffs agreed to SCEA’s proposed  
 13 protective order. *Id.*

## 14 ARGUMENT

### 15 **I. PLAINTIFFS ARE ENTITLED TO DISCOVERY FROM SCEA’S PARENT** 16 **COMPANY**

17 Under the Federal Rules of Civil Procedure, a party is required to produce documents  
 18 within its “possession, custody, or control.” *See* Fed. R. Civ. P. 34(a). Control is defined as “the  
 19 legal right to obtain documents upon demand.” *See United States v. Int’l Union of Petroleum*  
 20 *and Indus. Workers, AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir.1989); *Hill v Eddie Bauer*, 242  
 21 F.R.D. 556, 560 (C.D. Cal. 2007). Thus, “[a] party responding to a Rule 34 production request  
 22 ... is under an affirmative duty to seek that information reasonably available to [it] from [its]  
 23 employees, agents, or others subject to [its] control.” *Eddie Bauer*, 242 F.R.D. at 560 (internal  
 24 quotations omitted); *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 189 (C.D. Cal.  
 25 2006).

26 A subsidiary that is a party to a federal lawsuit may be required to produce documents  
 27 that are in the possession of its nonparty parent corporation if the relationship between the

1 subsidiary and parent corporation suggests that the subsidiary has legal control of the documents.  
2 *See In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999). Control has been found to exist  
3 where: (1) the subsidiary was an agent of the parent in the transaction giving rise to the lawsuit;  
4 (2) the relationship is such that the agent-subsubsidiary can secure documents of the principal-parent  
5 to meet its own business needs and the documents are helpful for use in litigation; (3) there is  
6 access to documents when the need arises in the ordinary course of business; or (4) the  
7 subsidiary was the marketer and servicer of the parent’s product in the United States. *See, e.g.*,  
8 *Gerling Int’l Ins. Co. v. Commissioner*, 839 F.2d 131, 140-41 (3d Cir. 1988) (cited with approval  
9 in *In re Citric Acid*, 191 F.3d at 1108); *Camden Iron and Metal, Inc. v. Marubeni America Corp.*,  
10 138 F.R.D. 438, 442 (D.N.J. 1991) (“Evidence considered by the courts [in considering whether  
11 a subsidiary has control over documents] includes the degree of ownership and control exercised  
12 by the parent over the subsidiary, a showing that the two entities operated as one, demonstrated  
13 access to documents in the ordinary course of business, and an agency relationship.”).

14 In their first set of document requests, Plaintiffs sought materials that SCEA indicated  
15 would not be in its possession (such as documents related to the reasons for including and  
16 subsequently disabling the Other OS feature), but in the possession of its parent company, SCEI,  
17 in Japan. As SCEA has produced relatively scant documents until the protective order issues are  
18 resolved, Plaintiffs are not in a position to determine where relevant materials may be physically  
19 located, or what role SCEA, as opposed to SCEI, had in these issues. Plaintiffs are, however,  
20 entitled to production of these and other relevant materials whether they are here or in Japan.  
21 One of the key issues in this case will be *why* SCEA/SCEI decided to remove the “other OS”  
22 feature since SCEA contends that it was entitled to do so for security reasons under its TOS. *See*  
23 *Defendant’s Motion to Dismiss* (Dkt. No. 97) at 22.

24 In this instance, SCEA was acting as the “agent” of SCEI in the transaction giving rise to  
25 the lawsuit: the sale of a PS3 unit and subsequent removal of a core, advertised feature. SCEA is  
26 apparently able to produce documents from SCEI, as it proposed to do so but only if Plaintiffs  
27 waived any right to name SCEI. *Rivas Decl., Ex. M.* SCEA’s proposal is sufficient to

1 demonstrate its ability to obtain documents upon demand from its parent, a not uncommon  
2 finding in similar cases. *See, e.g., Choice-Intersil Microsystems, Inc. v. Agere Systems, Inc.*, 224  
3 F.R.D. 471 (N.D. Cal. 2004); *Cooper Industries, Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918,  
4 919 (S.D. N.Y. 1984); *United States v. Faltico*, 586 F.2d 1267, 1270 (8th Cir.1978) (affirming  
5 that parent/subsidiary corporate relationship constituted “control” over documents). Indeed, as  
6 the party responsible for the marketing and sales in North America of the PS3 units that SCEI  
7 designs and produces, it is only logical that SCEA would have the ability to request documents  
8 about this product from SCEI.

9         This is consistent with similar findings in this District. In *Choice-Intersil*, Judge Larson  
10 ordered an American subsidiary to produce documents held by its German-based parent. 224  
11 F.R.D. 471 (N.D. Cal. 2004). The Court looked at several factors in finding that the subsidiary  
12 had access and control over the documents: the subsidiary was wholly-owned by the parent, the  
13 subsidiary would have marketed the parent’s product in North America if not for a change in  
14 market conditions, the parent and subsidiary shared some databases, and “upon demand, [the  
15 subsidiary] was able to obtain high-level documents from” the parent. *Id.* at 472-73. The facts  
16 in this case closely mirror those in *Choice-Intersil*. SCEA is a subsidiary of SCEI, SCEA  
17 markets SCEI’s products (including the PS3), and SCEA has the ability to obtain documents  
18 from SCEI as evidenced by its proposal.

19         SCEA’s marketing relationship is particularly relevant to this analysis. When a subsidiary  
20 markets the products of its parent, courts have found the subsidiary to control documents related  
21 to those products held by the parent corporation. *See, e.g., Cooper Industries*, 102 F.R.D. at 919-  
22 20. In *Cooper Industries*, a wholly-owned subsidiary was both a marketer and servicer of its  
23 parent corporation’s products. *Id.* The court held the subsidiary had control over the documents  
24 requested because:

25                 The documents plaintiff seeks all relate to the [products] that  
26                 defendant works with every day; it is inconceivable that defendant  
27                 would not have access to these documents and the ability to obtain  
28                 them for its usual business.

1 *Cooper Industries*, 102 F.R.D. at 919-920 (internal citations and footnotes omitted). The court  
2 continued:

3           The documents and records that a corporation requires in the  
4           normal course of its business are presumed to be in its control  
5           unless the corporation proves otherwise. Any other rule would  
6           allow corporations to improperly evade discovery.

6 *Id.*

7           SCEA should not be able to evade discovery by arguing that the documents are located in  
8 Asia. Notably, this is not the first time that SCEA has been ordered to produce discovery on  
9 behalf of its corporate parent, SCEI.<sup>2</sup> In *Microunity Systems Engineering Inc., v. SCEA*  
10 *Computer Entertainment America Inc.*, Case No. 2:05cv505 TJW (E.D. Tex.), the plaintiffs  
11 sought to compel SCEA to produce SCEI witnesses for depositions in the United States given  
12 that SCEA claimed a lack of knowledge about 30(b)(6) topics (similar to SCEA's claim, for  
13 example, that it has little or no relevant information about the addition or removal of the Other  
14 OS function). *See* Plaintiffs' Request for Judicial Notice ("RJN") filed concurrently herewith,  
15 Ex. 1, 2. The Court ordered SCEA to produce SCEI witnesses in California or pay all related  
16 expenses of taking those depositions in Asia. RJN, Ex. 3. Likewise, the fact the SCEI is located  
17 in Japan is of no moment. In *Japan Halon Co. v. Great Lakes Chem. Corp.*, 155 F.R.D. 626,  
18 627-29 (N.D. Ind. 1993), the court criticized the party refusing to produce documents in the  
19 possession of its parent corporation because it claimed the parent did not legally exercise control  
20 over the subsidiary based on Japanese law. The court stated: "The tactics of some counsel in this  
21 case have the distinct odor of an effort to prolong the discovery disputes so as to undermine the  
22 trial date in this case" and then ordered the subsidiary to produce the documents within the  
23 possession of the parent corporation in Japan. *Id.* at 629. Accordingly, SCEA should be ordered  
24 to provide relevant discovery from SCEI including the production of documents that are

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26 <sup>2</sup> Plaintiffs are not aware if similar orders have been issued in other cases against SCEA as most  
27 of these types of discovery decisions are unreported. Given SCEA's role as the US agent and  
28 marketer of SCEI's products, however, Plaintiffs would expect that SCEA has produced  
discovery from SCEI before.

1 responsive to Plaintiffs' Document Requests whether such documents are located here or in  
2 Japan.

3 **II. THE NORTHERN DISTRICT OF CALIFORNIA'S STANDARD PROTECTIVE**  
4 **ORDER IS APPROPRIATE FOR THIS CASE**

5 Plaintiffs do not dispute that a protective order is needed to govern the production of  
6 confidential information in this case. Plaintiffs do, however, disagree as to what terms should be  
7 contained in any protective order. Plaintiffs requested that SCEA agree to the standard  
8 protective order for this District. SCEA refused. As the proponent of stricter terms beyond those  
9 contained in the model protective order, SCEA should have the burden here to justify any  
10 additional layers of protection and should have sought a protective order against such production.  
11 *See, e.g., Phoenix Sol'ns. Inc. v. Wells Fargo Bank, N.A.*, 254 F.R.D. 568, 575 (N.D. Cal. 2008)  
12 (noting that "[t]he burden of demonstrating the need for protection from discovery is placed on  
13 the party seeking a protective order, not on the party opposing the order"); *Shared Memory*  
14 *Graphics, LLC v. Apple, Inc.*, No. C-10-2475 VRW (EMC), 2010 WL 4704420, at \*1 (Nov. 12,  
15 2010) (Chen, J.) (same). Plaintiffs seek an order from this Court that requires SCEA to produce,  
16 without further delay, documents that have been outstanding since October 8, 2010, subject to  
17 Northern District of California's Standard Protective Order.

18 The Northern District of California offers two standard protective orders which "are  
19 provided by the Court as model forms to which counsel may stipulate in a particular case."<sup>3</sup> The  
20 Court provides a "standard" protective order and a "patent - highly sensitive" protective order.  
21 The patent order is meant to apply to intellectual property cases. This is not a patent case  
22 involving SCEA's competitors (such as Microsoft or Nintendo) and highly confidential business  
23 secrets that SCEA would not want them to see. Accordingly, there is minimal risk of "misuse of  
24 trade secrets by competitors." *See Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470  
25 (9th Cir. 1992). Nevertheless, SCEA has demanded that Plaintiffs stipulate to the patent

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27 <sup>3</sup>[http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31/5e428ee77b](http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31/5e428ee77bf8e03b88256dd3005d9450?OpenDocument)  
28 [f8e03b88256dd3005d9450?OpenDocument](http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31/5e428ee77bf8e03b88256dd3005d9450?OpenDocument)

1 protective order before SCEA will produce *any* confidential materials. *See* Rivas Decl. ¶12, Ex.  
 2 J.<sup>4</sup>. Under SCEA’s proposed order, Plaintiffs are also required to disclose to SCEA any potential  
 3 consultants or experts to whom Plaintiffs might want to show materials that SCEA has  
 4 designated as “highly confidential,” as well as detail which documents those are. *See id.*, Ex. J  
 5 (SCEA’s Proposed Order) at ¶7.4(a). Further, the named Plaintiffs are not allowed to view  
 6 highly confidential designated materials. *Id.* at ¶7.3. SCEA also inserted several additional  
 7 unacceptable provisions, including altering timelines appearing in the model order and restricting  
 8 statements made in open court. *See, e.g., id.* at ¶¶3.1, 6.3.

9 To justify the provisions in dispute, SCEA must provide case-specific reasoning showing  
 10 why these provisions are required to avoid harm in this case. *Cf. Beckman Indus. v.*  
 11 *International Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (“Broad allegations of harm,  
 12 unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c)  
 13 test.”) (internal quotation omitted); *see also Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d  
 14 1122, 1130 (9th Cir. 2003) (“A party asserting good cause bears the burden, for each particular  
 15 document it seeks to protect, of showing that specific prejudice or harm will result if no  
 16 protective order is granted”) (internal citations omitted). SCEA has not met its burden to justify  
 17 the onerous terms it has proposed. This Court has recognized that “courts have viewed with  
 18 disfavor blanket protective orders untethered to the good cause standard.” *Medtronic Vascular,*  
 19 *Inc. v. Abbott Cardiovascular Sys., Inc.*, C-06-1066 PHJ EMC, 2007 WL 4169628, \*2. (N.D.  
 20 Cal. Nov. 20, 2007). Indeed, this Court held in *Medtronic Vascular Inc.* that even if the parties  
 21 had stipulated to a protective order designating documents as “confidential” and “highly  
 22 confidential,” a party must still meet its burden to show good cause why a document is so  
 23  
 24

25  
 26 <sup>4</sup> Notably, Plaintiffs agreed to abide by the most restrictive terms possible and treat all SCEA  
 27 documents as “Attorneys Eyes Only” that would not be shared with any outside experts or  
 28 consultants until this issue was resolved. SCEA refused to agree. Thus, to date, SCEA has only  
 produced publicly available, non-confidential documents to Plaintiffs documents requests served  
 in September 2010.

1 designated. *Medtronic Vascular Inc.*, 2007 WL 4169628, at \*2 (granting defendant’s motion to  
2 de-designate plaintiff’s “confidential documents” due to plaintiff’s failure to show good cause).

3 The *only* issue SCEA has raised in its correspondence with Plaintiffs as supporting the  
4 need for the “patent” protective order is that at some unspecified future date, SCEA may have to  
5 produce allegedly highly confidential “source code” because Plaintiffs assert in their Complaint  
6 that alternatives to disabling the “Other OS” function existed. *See* Rivas Decl., Ex. J. This is a  
7 red herring. Plaintiffs have *not* requested SCEA’s source code. If Plaintiffs decide that they  
8 *might* need such code in the future, the standard protective order easily allows for a party to seek  
9 modification and Plaintiffs suggested to SCEA that they could address this issue at that time.  
10 *See id.*, Exs. J, L. SCEA’s protests at this time are simply “broad, conclusory allegations of  
11 harm.” *Medtronic Vascular, Inc.*, 2007 WL 4169628, at \*2 (*citing Charles O. Bradley Trust v.*  
12 *Zenith Capital LLC*, No. C-04-2239 JSW (EMC), 2006 WL 798991, \*1 (N.D.Cal. Mar. 24,  
13 2006).

14 As Plaintiffs’ experts and consultants will be bound to use any confidential discovery  
15 only for purposes of this litigation pursuant to the Northern District’s Standard Stipulated  
16 Protective Order, there is also no need for SCEA to have advance knowledge of which experts  
17 Plaintiffs have retained, what otherwise undisclosed consultants Plaintiffs might use, and which  
18 documents Plaintiffs intend to show them in preparation of Plaintiffs’ case. *Miller v. NTN*  
19 *Communs., Inc.*, No. 97cv1116-BTM (JAH), 1998 U.S. Dist. LEXIS 13753, \*8 (S.D. Cal. July  
20 23, 1998) (rejecting request for protective order requiring prior-notification provision because  
21 “[d]isclosure of the identity of plaintiffs’ potential non-testifying experts may lessen the number  
22 of candid opinions available as well as the number of able consultants willing to discuss” the  
23 case).<sup>5</sup>

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26 <sup>5</sup> Plaintiffs also requested that SCEA stipulate to a standard order covering expert disclosures.  
27 SCEA also refused. Nevertheless, the amendments to the Federal Rules which went into effect  
28 December 1, 2010, address this issue and protect communications and drafts shared between  
counsel and experts. Fed. R. Civ. P. 23.

1 Plaintiffs will be prejudiced if they are required to disclose experts prematurely (and, in  
2 particular, the documents these experts viewed) and if they are required to disclose non-testifying  
3 consultants at all. It may be appropriate to impose the expert disclosure and approval procedures  
4 in contentious IP litigation where competing companies' highly confidential, technological trade  
5 secrets will be exposed, but that is simply not the case in this straightforward, consumer class  
6 action based on SCEA's misrepresentations. SCEA has delayed its discovery obligations long  
7 enough and the provisions related to disclosure of confidential information in this District's  
8 standard protective order more than adequately addresses any of SCEA's concerns. *See Rambus,*  
9 *Inc. v. Nvidia Corp.*, C 08-3343 SI, 2009 WL 982123, \*1 (N.D. Cal. Apr. 13, 2009) (in order to  
10 prevent delay in entering protective order, court ordered the parties to file a proposed protective  
11 order based on the model protective order without any of defendant's proposed changes).

12 Plaintiffs respectfully request that the Court compel SCEA to produce confidential  
13 materials subject to the Northern District of California's Standard Protective Order.

14 **CONCLUSION**

15 Based on the foregoing, Plaintiffs respectfully request that the Court grant this motion.

16 Dated: December 15, 2010

Respectfully Submitted,

17 **CALVO & CLARK, LLP**

18 /s/ James A. Quadra

19 James A. Quadra

Rebecca Coll

20 One Lombard Street, Second Floor

San Francisco, California 94111

21 Telephone: 415-374-8370

22 Facsimile: 415-374-8373

23 Dated: December 15, 2010

**FINKELSTEIN THOMPSON LLP**

24 /s/ Rosemary M. Rivas

25 Rosemary M. Rivas

Tracy Tien

26 100 Bush Street, Suite 1450

San Francisco, California 94104

27 Telephone: 415-398-8700



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Facsimile: 415-398-8704

Douglas G. Thompson  
**FINKELSTEIN THOMPSON LLP**  
1050 30th Street, NW  
Washington, DC 20007  
Telephone: 202-337-8000  
Facsimile: 202-337-8090

Dated: December 15, 2010

**HAUSFELD LLP**

/s/ James Pizzirusso  
James Pizzirusso (*pro hac vice*)

1700 K St., NW, Suite 650  
Washington, DC 20006  
Telephone: 202-540-7200  
Facsimile: 202-540-7201

Michael P. Lehman  
**HAUSFELD LLP**  
44 Montgomery Street, Suite 3400  
San Francisco, California 94104  
Telephone: 415-633-1908  
Facsimile: 415-358-4980

*Co-Interim Lead Counsel for Plaintiffs*

Bruce L. Simon  
**PEARSON, SIMON, WARSHAW &  
PENNY, LLP**  
44 Montgomery Street, Suite 2450  
San Francisco, California 94104  
Telephone: 415-433-9000  
Facsimile: 415-433-9008

Daniel L. Warshaw  
**PEARSON, SIMON, WARSHAW &  
PENNY, LLP**  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, California 91403  
Telephone: 818-788-8300  
Facsimile: 818-788-8104

Joseph G. Sauder  
Matthew D. Schelkopf  
Benjamin F. Johns

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27  
28

**CHIMICLES & TIKELIS LLP**

361 W. Lancaster Ave.  
Haverford, Pennsylvania 19041  
Telephone: 610-642-8500  
Facsimile: 610-649-3633

Ralph B. Kalfayan  
**KRAUSE, KALFAYAN, BENNICK &  
SLAVENS, LLP**

625 Broadway, Suite 635  
San Diego, California 92101  
Telephone: 619-232-0331  
Facsimile: 619-232-4019

Jeffrey Carton (*pro hac vice*)  
D. Greg Blankinship (*pro hac vice*)  
**MEISELMAN, DENLEA, PACKMAN,  
CARTON  
& EBERZ LLP**

1311 Mamaroneck Avenue  
White Plains, New York 10605  
Telephone: 914-517-5055  
Facsimile: 914-517-5055

John R. Fabry  
**BAILEY & GALYEN**  
18333 Egret Bay Blvd., Suite 444  
Houston, Texas 77058  
Telephone: 281-335-7744  
Facsimile: 281-335-5871

*Counsel for Plaintiffs*

I, Rosemary M. Rivas, am the ECF user whose ID and password are being used to file this MOTION FOR ORDER: (1) COMPELLING DISCOVERY FROM DEFENDANT SCEA'S PARENT COMPANY; AND (2) ENTERING THE NORTHERN DISTRICT OF CALIFORNIA'S STANDARD STIPULATED PROTECTIVE ORDER. In compliance with General Order 45, X.B., I hereby attest that James A. Quadra and James Pizzirusso have concurred in this filing.