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SONY COMPUTER ENTERTAINMENT
7 AMERICA LLC (erroneously sued as “Sony
Computer Entertainment America Inc.”)
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 In re SONY PS3 “OTHER OS”
LITIGATION

CASE NO. 3:10-CV-01811 RS (EMC)

**OBJECTION TO PLAINTIFFS’
EVIDENCE OFFERED IN SUPPORT OF
MOTION TO COMPEL AND MOTION
FOR PROTECTIVE ORDER**

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

1 Defendant Sony Computer Entertainment America LLC (“SCEA”) hereby objects to
2 evidence presented in the Declaration of Rosemary M. Rivas and Declaration of John Fabry in
3 support of Plaintiffs’ Motion to Compel and Motion for Protective Order.

4 In support of the Plaintiffs’ discovery motions, Ms. Rivas submits a declaration (Docket
5 #114), submitting a declaration of John Fabry, an attorney representing Plaintiffs in this action,
6 regarding forensic imaging of Plaintiffs’ PlayStation®3 console (“PS3”) hard drives. See Docket
7 #114, Ex. P (Fabry Decl.), 1:2-15. Specifically, Mr. Fabry declares to statements made by John
8 Molisani, a purported “forensic engineer,” regarding imaging these hard drives. *Id.*

9 This evidence is inadmissible hearsay because it constitutes a statement (or statements),
10 other than Ms. Rivas’ or Mr. Fabry’s, of an out-of-court declarant offered to prove the truth of the
11 matter asserted. Fed. R. Evid. 801(c). On this basis, this portion of Ms. Rivas’ and Mr. Fabry’s
12 declarations should be stricken. *Id.*; *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1420 (9th
13 Cir. 1994); *Field v. Trigg County Hosp., Inc.*, 386 F.3d 729, 735 (6th Cir. 2004); *see also*
14 *Kaczmarek v. Allied Chemical Corp.*, 836 F.2d 1055, 1060-61 (7th Cir. 1987); *Elizarraras v.*
15 *Bank of El Paso*, 631 F.2d 366, 373-74 (5th Cir. 1980).

16 For the foregoing reason, page 1, line 2 through line 14 of Mr. Fabry’s declaration should
17 be stricken.

18 Dated: January 14, 2011

19 DLA PIPER LLP (US)

20 By: /s/ Luanne Sacks
21 LUANNE SACKS
22 Attorneys for Defendant
23 SONY COMPUTER ENTERTAINMENT
24 AMERICA LLC