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

14 AGUSTIN CACCURI, ADRIAN CENDEJAS,
and ALLEN NEUMARK, on behalf of
15 themselves and all others similarly situated,

16 Plaintiffs,

17 v.

18 SONY INTERACTIVE ENTERTAINMENT
19 LLC,

20 Defendant.

Case Nos.: 3:21-cv-03361-RS
3:21-cv-03447-RS
3:21-cv-05031-RS

DEFENDANT’S MOTION TO DISMISS

Judge: Hon. Richard Seeborg
Date: May 12, 2022
Time: 1:30 pm

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on May 12, 2022 at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Richard Seeborg in Courtroom 3, 17th Floor, 450 Golden Gate Avenue, San Francisco, California, Defendant Sony Interactive Entertainment LLC (“Defendant”) by and through their undersigned counsel, will, and hereby do, move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing with prejudice the Consolidated Class Action Complaint (“Complaint”) filed on December 20, 2021 by Plaintiffs Agustin Caccuri, Adrian Cendejas, and Allen Neumark (collectively the “Plaintiffs”)

This motion is based upon this Notice of Motion and the accompanying Memorandum of Points and Authorities filed with these documents, any matters of which the Court may take judicial notice, the files and records in this action, and such oral and documentary evidence as this Court may allow at the hearing of this motion.

Dated: February 18, 2022

Respectfully submitted,

/s/ John F. Cove, Jr.

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STATEMENT OF ISSUES TO BE DECIDED

Whether the Consolidated Class Action Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) because:

- 1. Plaintiffs have failed to allege monopoly power or a dangerous probability of achieving monopoly power in a properly-defined relevant antitrust market. (Counts I–IV).
- 2. Plaintiffs have failed to allege anticompetitive conduct. (Counts I–IV).
- 3. Plaintiffs have failed to allege anticompetitive effects or antitrust injury. (Counts I–IV).
- 4. Plaintiffs have failed to allege facts supporting a claim for unjust enrichment. (Count V).

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23
24
25
26
27
28

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIESiv

PRELIMINARY STATEMENT 1

SUMMARY OF PLAINTIFFS’ ALLEGATIONS..... 3

A. Sony, The PlayStation, And Industry Background 3

B. The PlayStation Store And Videogame Distribution 3

C. Plaintiffs And Their Claims 5

ARGUMENT 5

I. PLAINTIFFS FAIL TO ALLEGE FACTS SHOWING THAT SONY POSSESSES MONOPOLY OR NEAR-MONOPOLY POWER IN A PLAUSIBLE RELEVANT MARKET. 7

A. Plaintiffs’ Allegations Render Their Single-Brand Market Implausible. 7

B. Plaintiffs’ Allegations Render Their Aftermarket Theory Implausible. 10

C. Plaintiffs Do Not Allege That Sony Has Monopoly Power In Any Relevant Market. 14

II. PLAINTIFFS DO NOT PLAUSIBLY ALLEGE THAT SONY ENGAGED IN ANTICOMPETITIVE CONDUCT. 15

A. Sony’s Decision to Stop Offering Full-Game Download Codes to Third-Party Retailers Is Not Anticompetitive. 15

B. Sony’s Use Of A Wholesale Model To Sell Digital Games Is Not Anticompetitive. 19

III. PLAINTIFFS FAIL TO PLAUSIBLY ALLEGE AN ANTICOMPETITIVE EFFECT OR ANTITRUST INJURY. 20

A. Plaintiffs Have Not Alleged Facts Demonstrating The Challenged Conduct Caused Supracompetitive Prices Or Other Effects. 21

1. *Plaintiffs Allege No Facts Showing That Sony Charges Supracompetitive Prices.*..... 21

2. *Plaintiffs’ Allegations Of Other Alleged Anticompetitive Harms Are Speculative, Conclusory, And Contradicted By The Complaint.* 23

B. Unilateral Termination of A Distribution Channel Does Not Cause Antitrust Injury. 23

IV. PLAINTIFFS’ STATE LAW CLAIMS FAIL. 25

CONCLUSION 25

TABLE OF AUTHORITIES

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

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