

1 Michael M. Buchman (admitted *pro hac vice*)
 2 **MOTLEY RICE LLC**
 3 777 Third Avenue, 27th Floor
 4 New York, NY 10017
 5 Tel: (212) 577-0050
 6 mbuchman@motleyrice.com
 7 *Interim Lead Counsel for the Proposed Class*
 8 *[Additional Counsel Listed on Signature Page]*

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

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

15 Plaintiffs,

16 v.

17 SONY INTERACTIVE
 18 ENTERTAINMENT LLC,
 19 Defendant.

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

**PLAINTIFFS' OPPOSITION TO
 THE MOTION TO DISMISS THE
 CONSOLIDATED AMENDED
 CLASS ACTION COMPLAINT**

Judge: Hon. Richard Seeborg

Date: December 1, 2022

Time: 1:30 pm

STATEMENT OF ISSUES TO BE DECIDED

On July 15, 2022, this Court entered an Order dismissing the Consolidated Class Action Complaint on the ground the Complaint failed to adequately allege anticompetitive conduct under the Sherman Act. *Caccuri v. Sony Interactive Entertainment LLC*, 21-cv-03361-RS, 2022 WL 2789554, at *6 (N.D. Cal. July 15, 2022) (Seeborg, J.) (“Order”). Plaintiffs are providing the Court with a redline of the Consolidated Amended Class Action Complaint for efficient review of the revisions. *See* Exhibit A. The primary issue on this motion is whether the Consolidated Amended Class Action Complaint now adequately alleges anticompetitive conduct since:

1. Plaintiffs allege that Sony has refused to deal with third-party retailers. (Counts I-IV).
2. Plaintiffs allege that Sony voluntarily terminated a voluntary and profitable digital game business arrangement with retailers. (Counts I-IV).
3. Plaintiffs allege Sony’s rationale for ending game-specific cards was to forgo short-term profits in order to exclude competition. (Counts I-IV).
4. Plaintiffs allege that Sony continues to sell game specific cards directly to customers. (Counts I-IV).
5. Despite Sony’s argument, Plaintiffs do not need to allege that Sony and third-party retailers were previously existing competitors before their distribution arrangement because there is no such requirement under *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985), *Federal Trade Comm. v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020) or *Metronet Serv. Corp. v. Qwest Corp.*, 383 F.3d 1124 (9th Cir. 2004).

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