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7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN MATEO**

10 TANGENT GAMES, LLC, a California
11 Limited Liability Company

12 Plaintiff,

13 v.

14 SONY INTERACTIVE
ENTERTAINMENT LLC, a California
15 Limited Liability Company; SONY
COMPUTER ENTERTAINMENT
16 AMERICA LLC, a Delaware Limited
Liability Company; and DOES 1-10,
17 inclusive,

18 Defendants.
19

Case No. 20-CIV-02698

COMPLAINT FOR:

- (1) BREACH OF CONTRACT**
- (2) BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**
- (3) FRAUD (FALSE PROMISES)**

1 Plaintiff Tangent Games, LLC (“Tangent” or “Plaintiff”), by and through its
2 undersigned counsel, sets forth its Complaint against Defendants Sony Interactive
3 Entertainment LLC (“SIE”), Sony Computer Entertainment America LLC (“SCEA”)
4 (collectively “Sony”) and Does 1-10, and hereby alleges the following:

5 **INTRODUCTION**

6 This action is rooted in Sony’s breach of its obligation to pay at least \$8 million
7 in royalties owed to Tangent, a videogame developer, as required by development
8 agreement into which the parties entered (“the Agreement”). Tangent developed
9 the game “Here They Lie” (“the Game”) for Sony and, as compensation for Tangent’s
10 development efforts, Sony agreed to pay royalties for Sony’s distributions of the
11 Game to PlayStation subscribers. Sony, however, has utterly failed to pay Tangent
12 royalties for distributions of the Game to its PS+ subscribers.

13 **PARTIES**

14 1. Plaintiff Tangent Games, LLC (“Tangent”) is a California limited
15 liability company with its principal place of business in Glendale, California.
16 Tangent’s business is the development of videogames. Tangent previously operated
17 under the name Tangentman, LLC (“Tangentman”). Tangent, as Tangentman,
18 entered into the agreement referenced in paragraph 7 that is the subject of the
19 parties’ dispute. Hereinafter, all actions carried out by Tangentman shall be
20 referenced as actions of “Tangent.”

21 2. On information and belief, Defendant Sony Interactive Entertainment
22 LLC (“SIE”) is a California limited liability company headquartered at 2207
23 Bridgepoint Pkwy, San Mateo, California 94404. SIE handles research and
24 development, production, and sales of both hardware and software for the
25 PlayStation video game systems. SIE is also a developer and publisher of video
26 game titles.

27 3. On information and belief, Defendant Sony Computer Entertainment
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1 office or place of business at 2207 Bridgepoint Pkwy, San Mateo, California 94404.
2 SCEA markets the PlayStation family of products and develops, publishes, markets,
3 and distributes PlayStation software for the North American market.

4 4. Tangent has been dealing interchangeably with SIE and SCEA since
5 the events described in the ensuing paragraphs that relate to Sony's breaches of the
6 agreement at issue in this litigation.

7 5. The true names and capacities of all defendants sued herein as Does 1
8 through 10 (the "Doe Defendants") are unknown to Plaintiff, who therefore sues
9 such defendants by fictitious names. If necessary, Plaintiff will seek leave of Court
10 to amend this Complaint to state their true names and capacities when the same
11 have been ascertained. Plaintiff is informed and believes, and on that basis alleges,
12 that the Doe Defendants direct, control, ratify, participate in, materially contribute
13 to, profit from, induce, encourage, facilitate, and/or are the moving force behind the
14 violations of the causes of action raised herein or are otherwise liable to Plaintiff as
15 a result of their participation in all or some of the acts set forth hereinafter. Plaintiff
16 is further informed and believes and therefore alleges that each of the Doe
17 Defendants was the agent of at least one of the named defendants, and in doing the
18 things alleged in this Complaint was acting within the course and scope of such
19 agency, and/or acted in concert with at least one of the named defendants, and is
20 jointly and severally liable to Plaintiff with said named defendants.

21 **JURISDICTION**

22 6. The instant court can exercise personal jurisdiction over SCEA and
23 SIE as their principal places of business are in San Mateo, California. Venue is also
24 proper in San Mateo County for this reason.

25 7. SCEA and Tangent entered into a Development Agreement that was
26 effective on January 31, 2015, (the "Agreement"). A true and correct copy of the
27 Agreement is attached hereto as **Exhibit 1**. The Agreement provides that all
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1 Superior Court. Accordingly, Sony is subject to personal jurisdiction for the
2 additional reason that they have contractually agreed to litigate in San Mateo
3 County Superior Court.

4 **GENERAL ALLEGATIONS**

5 8. The Agreement broadly called for Tangent to develop the Game for
6 Sony's PlayStation 4 system in downloadable format and pursuant to a milestone
7 delivery schedule. The Game is a single-player experiential horror game. The
8 primary gameplay is a first-person trip into a dark, unpredictable nightmare realm
9 where the player will experience mysterious environments and characters in a world
10 that is surreal and profoundly unsettling. Gameplay focuses on exploration, clue
11 gathering and decision making. Player actions will require choices during
12 gameplay, which helps uncover how the existential narrative unfolds during the
13 game to reveal the haunting truth of Daedalus' realms.

14 9. During the parties' negotiations of the Agreement in the month of
15 February 2015, on information and belief, SCEA, through Philip Piliero, Senior
16 Corporate Counsel, pushed for provisions that would allow Sony to distribute the
17 Game to PS+ subscribers on a royalty-free basis. Accordingly, Mr. Piliero sent
18 Tangent a draft of the Agreement that sought to carve out an exception to Sony's
19 obligation to pay royalties in a then proposed section 4.2.1 of the Agreement. SCEA
20 requested that it be allowed to distribute the Game without any royalty obligation
21 to Tangent as part of a PS+ game of the month program or similar PlayStation
22 promotion. Tangent refused, communicating to Sony on February 11, 2015, on
23 information and belief, that Tangent would not accept royalty-free distributions of
24 its Game. Over the course of the parties' ensuing negotiations, Mr. Piliero deleted
25 the proposed language that would have authorized SCEA to distribute the Game to
26 PS+ subscribers on a royalty-free basis.

27 10. After dropping its demands to distribute the Game to PS+ subscribers
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1 contains no language specifying that Sony may distribute the Game to PS+
2 subscribers on a royalty-free basis.

3 11. Shawn Layden, then CEO of SCEA, signed the Agreement on behalf of
4 Sony. John Garcia-Shelton, Director of Production, signed the Agreement on behalf
5 of Tangentleman, LLC.

6 12. The Agreement sets forth a broad royalty payment scheme. Section 4.2
7 of the Agreement states that “SCEA will calculate and make royalty payments as
8 set forth in Exhibit D. Royalties will not be due or payable on (i) no cost distribution
9 of the Game (ii) a sale of the Game as a stand-alone unit at less than the total cost
10 of goods plus federal, state, local or foreign withholding, sales, excise or value added
11 taxes and duties; and (iii) distribution of the Game for replacement or corrected
12 copies.”

13 13. Exhibit D provides the calculation of royalties as a percentage of the
14 overall amount earned in sales, but it does not limit what sales constitute royalties.
15 Thus, outside of the three enumerated exceptions, SCEA agreed to pay royalties to
16 Plaintiff for all distributions of the Game. Moreover, the regime for the payment of
17 royalties encompasses more than direct sales of the Game.

18 14. In addition, Addendum 1 to Exhibit D specifies the payment scheme
19 for royalties in the event that users download the Game via the PlayStation Now
20 service.

21 15. PlayStation Now (“PSNow”) is a cloud-based subscription service in
22 which consumers buy a subscription giving them access to a library of games as part
23 of their subscription fee.

24 16. Per the plain language of the Agreement, a distribution made as part
25 of subscription-based service to users counts as a distribution for which Sony must
26 pay royalties. There is no doubt that such a distribution of the Game based on
27 consumer payment is not “no cost” as there is a perquisite subscription fee. This is
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