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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 BOT M8 LLC,

14 Plaintiff,

15 v.

16 SONY CORPORATION OF AMERICA, SONY
17 CORPORATION, and SONY INTERACTIVE
18 ENTERTAINMENT LLC,

19 Defendants.

Case No. 3:19-cv-07027-WHA

**DEFENDANTS' MOTION TO
DISMISS UNDER RULE 12(B)(6)
FOR FAILURE TO STATE A CLAIM
& SUPPORTING MEMORANDUM**

Date: January 23, 2020
Time: 8:00 am
Room: Courtroom 12 - 19th Floor
Judge: Hon. William H. Alsup

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DEFENDANTS' MOTION TO DISMISS

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on January 23, 2020 at 8:00 a.m., or as soon thereafter as the
3 matter may be heard in the Courtroom of the Hon. William H. Alsup in the United States District Court
4 for the Northern District of California, San Francisco Courthouse, Courtroom 2, 19th Floor, 450 Golden
5 Gate Avenue, San Francisco, California 94102, Defendants Sony Corporation, Sony Corporation of
6 America, and Sony Interactive Entertainment LLC (“Defendants”) will move to dismiss the December 5,
7 2019 Amended Complaint filed by Plaintiff Bot M8 LLC (“Bot”) under Federal Rule 12(b)(6).

8 Although the Court previously ordered Bot to “file an amended complaint specifying, element-
9 by-element, its allegations of infringement” (Dkt. 65 at 1), Bot’s allegations in the Amended Complaint
10 regarding its various infringement theories merely parrot or paraphrase the language of certain required
11 limitations of each of the 19 asserted claims. This raises the question of what alleged basis exists for
12 Bot’s conclusory assertions—and fails to meet the threshold pleading requirement of providing “factual
13 content that allows the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As further explained in the attached
15 memorandum of points and authorities, Defendants respectfully request that Bot’s Amended Complaint
16 should be dismissed.

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Rules

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1 **I. INTRODUCTION**

2 The Court previously ordered plaintiff Bot M8 LLC (“Bot”) to “file an amended complaint
3 specifying, element-by-element, its allegations of infringement.” (Dkt. 65 at 1); *see also* (Ex. 1, 11/21/19
4 Tr. at 2:21-3:9) (instructing Bot that it must either “explain in your complaint every element of every
5 claim that you say is infringed” or face a motion to dismiss). However, Bot’s December 5, 2019
6 Amended Complaint (“AC”) fails to provide factual allegations that support a reasonable inference that
7 the required claim elements are satisfied by Bot’s various infringement theories.

8 Although the AC increases the quantity of Bot’s allegations, the quality has not improved. In its
9 AC, Bot asserts 19 claims from 6 patents against Sony’s PlayStation 4 video game consoles, PlayStation
10 Network online services, and several PlayStation 4 video game titles—and includes multiple alternative
11 theories for alleged infringement of these 19 claims. But rather than providing factual allegations that tie
12 the infringement theories to the accused products and features, the AC resorts—for at least one required
13 limitation of each asserted claim—to conclusory assertions that merely parrot or paraphrase the claim
14 language. No meaningful factual allegations are provided to support an inference that these conclusory
15 assertions are true, nor to suggest what basis Bot has for making them. In several instances, Bot’s
16 assertions do not address particular claim limitations at all, and in some instances Bot makes factual
17 assertions that contradict other factual assertions elsewhere in the AC. This scattershot approach of
18 offering numerous unsupported conclusory assertions regarding multiple alternative theories (in the
19 apparent hope that discovery may yield a colorable basis to pursue some subset of them) fails to meet the
20 threshold requirement of providing “factual content that allows the court to draw the reasonable inference
21 that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

22 The reason Bot’s AC fails to provide the required factual allegations supporting infringement is
23 because the accused products are different from the purported inventions set forth in the asserted patent
24 claims and do not infringe any of the asserted claims. The asserted patents were acquired by Bot from a
25 maker of commercial casino gaming machines and several key claim limitations are tied to features that
26 are aimed at such machines—but which are not applicable to the accused PlayStation 4 consumer video
27 game consoles and are therefore not used. For example:

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