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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 SONY COMPUTER ENTERTAINMENT
AMERICA LLC, a Delaware limited
19 liability company,

20 Plaintiff,

21 v.

22 GEORGE HOTZ, et al.,

23 Defendants.
24

Case No. 11-CV-000167 SI (JCS)

**GEORGE HOTZ'S MOTION FOR
PROTECTIVE ORDER**

25 Now Comes Defendant George Hotz, by and through counsel, and moves this
26 Court for Protective Order pursuant to Federal Rules of Civil Procedure Rule 26(c) and
27 FRCP 26(b)(2)(c), seeking to protect Defendant George Hotz from Plaintiff Sony
28 Computer Entertainment LLC's ("SCEA") overbroad jurisdictional discovery requests,

1 which are for the purpose of annoyance, embarrassment, oppression, and are an undue
2 burden and undue expense on Defendant. Please note that this Motion is in addition to
3 the Joint Protective Order, which is currently being drafted with Plaintiff's counsel.
4

5 **I. PRELIMINARY STATEMENT**

6 Mr. Hotz is a 21-year-old individual, who resides in New Jersey and who has not
7 consented to the jurisdiction of this Court. Despite the fact that SCEA has filed this
8 action and represented that this matter belongs in the Northern District of California,
9 SCEA now attempts to engage in a jurisdictional fishing expedition as a means to utilize
10 jurisdictional discovery to achieve other ends. Although the Court has limited discovery
11 to jurisdictional issues, SCEA has demanded overly burdensome and expensive
12 discovery from Plaintiffs that bears little, if any, relevance to the issues at hand.

13 The Defendant has shown good cause for the protective order sought herein, as
14 the discovery SCEA seeks is harassing, irrelevant, burdensome, expensive, and intrusive.
15 In addition, the confidential information sought to be protected could cause Defendant
16 irreparable harm if mishandled or exposed.

17 Mr. Hotz is not seeking to withhold information from Plaintiff. Instead, Mr. Hotz
18 seeks only to (1) protect the information he is willingly providing by directing that the
19 copy of his hard drive be created as-is and unaltered, and (2) relieve the undue burden
20 and expense of appearing in this forum for a deposition where Mr. Hotz will gladly offer
21 the same information through written deposition. Mr. Hotz has been extremely
22 accommodating to SCEA's demanding requests-- being responsive to questions and
23 inquiries at all hours of the day and night, providing his personal hard drive with
24 commercial, confidential, and valuable information so that SCEA can determine that
25 nothing pertaining to jurisdiction resides on such drive, turning over his Playstation
26 Computer, and remaining accessible despite the fact that he is not in the forum.

27 Mr. Hotz files this Motion for a Protective Order to limit the issues at hand to the
28 matters of jurisdiction, and to limit such discovery to less burdensome means. The

1 protection Defendant seeks would prevent irreparable harm and undue burden on
2 Defendant, while still granting SCEA the information it seeks to discover, without any
3 burden.

4 5 **II. LEGAL ARGUMENT AND AUTHORITY**

6 FRCP 26(c) provides the court may, for good cause, issue an order to protect a
7 party or person from annoyance, embarrassment, oppression, or undue burden or
8 expense. Moreover, FRCP 26(b)(2)(c) provides that limitations on discovery is required
9 and the Court must impose such limitations if "the discovery sought is unreasonably
10 cumulative or duplicative, or can be obtained from some other source that is more
11 convenient, less burdensome, or less expensive" or "the burden or expense of the
12 proposed discovery outweighs its likely benefit".

13 14 **(1) Defendant Has Shown Good Cause for Entry of a Protective Order.**

15 The U.S. Supreme Court has held that the discovery provisions, as all of the
16 Federal Rules of Civil Procedure, are subject to the injunction of Rule 1 that they "be
17 construed to secure the just, *speedy*, and *inexpensive* determination of every action."
18 *Herbert v. Lando*, 441 U.S. 153, 177 (1979). The Court goes on to elucidate that the
19 material sought in discovery be "relevant" should be firmly applied, and the district
20 courts should not neglect their power to restrict discovery where "justice requires
21 protection for a party or person from annoyance, embarrassment, oppression, or undue
22 burden or expense" pursuant to FRCP 26(c).*Id.* The federal courts have long recognized
23 a qualified evidentiary privilege for confidential information, and such qualified
24 protection for confidential information is also contemplated in the civil discovery
25 context. *Federal Open Market Committee of Federal Reserve System v. Merrill*, 443 U.S.
26 340, 356 (1979); *E. I. du Pont de Nemours Powder Co. v. Masland*, 244 U.S. 100, 103
27 (1917).

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2 **(2) Mr. Hotz's Hard Drive Should Be Copied As-Is Because it Does Not**
3 **Impact Jurisdictional Discovery, It Contains Confidential**
4 **Information, and it is Consistent with the Neutral's Certification.**

5 Mr. Hotz moves this Court for an Order directing Michael Grennier, the neutral
6 tasked with inspecting Mr. Hotz's devices, to copy the hard drive as-is, without first
7 making any changes to the hard drive. Defendant has agreed and already complied with
8 producing his hard drive and allowing a copy to be made. However, Defendant seeks to
9 prevent an unencrypted copy of his hard drive to be created, maintained, and possibly
10 exploited. Defendant's hard drive contains sensitive personal information, other
11 individuals' personal information and data, clients' proprietary data, and confidential
12 business information, which includes high value breakthrough innovations in the field of
13 technology. The information on Defendant's hard drive is highly confidential, is not
14 available to the public, and the emergence of any of that information would cause
15 Defendant irreparable harm. On the other hand, copying the hard drive as-is would not
16 cause Plaintiff any harm or burden.

17 This Court contemplates that only discovery pertaining to jurisdiction will be
18 conducted, but the Order provided by Sony, which this Court adopted, states that a copy
19 of Mr. Hotz's entire unencrypted hard drive shall be made and preserved. SCEA's
20 sweeping discovery request seeks to create and maintain a copy of Defendant's private,
21 personal information, confidential business information, and his clients' proprietary
22 information, which is irrelevant to the jurisdictional issue and is overbroad, burdensome
23 and harassing.

24 Discovery in this context must be limited to the issue at hand, which is
25 determining jurisdiction, and it should be limited accordingly. SCEA now attempts to
26 engage in a jurisdictional fishing expedition as a means to utilize jurisdictional discovery
27 to achieve other ends. This should not be allowed by this Court. "District courts need
28 not condone the use of discovery to engage in 'fishing expeditions.'" *Rivera v. NIBCO,*
Inc., 364 F.3d 1057, 1072 (9th Cir. 2004).

1 The Certification of Michael Grennier, the neutral tasked with inspecting Mr.
2 Hotz's devices, provides and delineates certain procedures that constitute best business
3 practices to examine Mr. Hotz's hard drive. Mr. Grennier's certification provides that a
4 copy of the hard drive must be decrypted to perform certain searches, but nothing
5 provides that a copy of the unencrypted drive must be or should be made. Indeed, Mr.
6 Grennier's certification contemplates that the hard drive shall be maintained in
7 encrypted form.

8 Mr. Hotz is requesting this Court ensure that the hard drives maintained remain
9 encrypted for two primary reasons. First, the hard drive provided by Mr. Hotz contains
10 confidential information related to a number of sensitive contracts with business
11 entities, and such information is required to be kept classified pursuant to the agreement
12 Mr. Hotz has with such entities. A large portion of this data relates to significant
13 breakthroughs in technology, including the SHA-1 cryptographic hash function. Such
14 research and breakthroughs have no relevance whatsoever to the current dispute
15 involving SCEA.

16 Second, beyond information required to be kept classified, there is information on
17 Mr. Hotz' hard drive that is of extreme commercial value. Most such information has
18 not been released to the public and remains confidential at this time. Mr. Hotz gained
19 initial fame as an innovative software wunderkind and Mr. Hotz has been offered
20 significant amounts of money for the sale of his applications. Currently, Mr. Hotz has
21 commercially valuable data and applications on his hard drive that, if released or
22 disclosed, whether through error or intentional actions, would be disastrous for Mr.
23 Hotz, both financially and to his reputation.

24 Last, it is significant to note that Mr. Hotz's request to maintain only an encrypted
25 copy of his hard drive is consistent with the procedures proscribed by Mr. Grennier in
26 his certification. Equally significant, Plaintiff will in no way be prejudiced by such an
27 order, as this in no way limits the information Plaintiff may obtain pursuant to its
28 discovery. Such Order will maintain and preserve the hard drive in its current protected

1 state, allow Plaintiff to obtain the information it seeks, and ensure that an identical copy
2 of the hard drive is maintained for redundancy and back-up purposes.

3
4 **(3) An In-Person Deposition is Unduly Burdensome and Written
Deposition is a less burdensome alternative.**

5 Unlike a multi-billion dollar company composed of subsidiaries and complex
6 operations, Mr. Hotz is a 21-year-old young man that has no ties to California. His
7 affidavits and all information provided thus far indicate this point. Despite this, SCEA is
8 attempting to drag Mr. Hotz into this forum where jurisdiction has not yet been
9 established for a deposition in which the number of questions that could be asked of him
10 are, at best, severely limited, and at worst, interposed for the purpose of annoyance,
11 harassment, prolonging litigation, and increasing costs.

12 Under Rule 26(b)(2), the court must consider whether the discovery sought is
13 cumulative or duplicative, or can be obtained from some another source; whether the
14 party seeking discovery has had ample opportunity to obtain the information pursuant
15 to prior discovery in the action; and whether the burden or expense of the proposed
16 discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2). Mr. Hotz is currently out
17 of the country, and to hail him into California for a deposition is unduly burdensome and
18 disruptive in the clearest sense of the phrase. This, coupled with the fact that the desired
19 information could just as easily be obtained from some other source that is more
20 convenient and less burdensome, requires a showing of good cause from the Plaintiff,
21 and an order effectuating such. *See In re Google Adwords Litigation* (N.D. Cal., 2010).
22 Indeed, the information sought is likely cumulative from the interrogatories already
23 provided to Mr. Hotz, rendering such deposition of dubious value. For these reasons,
24 Defendant seeks a protective order from this Court that limits the deposition of George
25 Hotz to a written deposition, in order to avoid undue burden and expense where the
26 information Plaintiff seeks could just as easily be obtained in written form.

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28 //

1 **III. CONCLUSION**

2 For the reasons set forth above, Defendant Hotz respectfully requests that the
3 Court grant his motion for a protective order directing that Defendant's hard drive be
4 copied as-is, in its encrypted form, and limiting the deposition to written form.

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7 Dated: March 15, 2010

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11 By _____/s/ Stewart Kellar
12 Stewart Kellar
13 Attorneys for Defendant George Hotz

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT
AMERICA LLC, a Delaware limited
liability company,

Plaintiff,

v.

GEORGE HOTZ, et al.,

Defendants.

Case No. 11-CV-000167 SI

**[PROPOSED] ORDER ON GEORGE
HOTZ'S MOTION FOR PROTECTIVE
ORDER**

This Court, having read all pleadings and papers in this matter, as well as considering the entire record, hereby ORDERS:

- (1) The Order of this Court, entered on March 15, 2011, pertaining to discovery, is hereby modified, such that TIG shall only make a copy of Mr. Hotz's encrypted hard drive, and any search and procedures shall move forward as consistent with the affidavit provided by Certification of Michael Grennier.
- (2) A deposition of Mr. Hotz shall be conducted via a written deposition.

IT IS HEREBY ORDERED.

Dated: _____

Honorable Joseph C. Spero
United States, Magistrate Judge

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CERTIFICATION OF CONFERENCE PURSUANT TO F.R.C.P. 26(c)

I hereby certify that I have in good faith conferred or attempted to confer with
opposing counsel in an effort to resolve this dispute without Court action.

Dated: March 17, 2010

By _____/s/ Stewart Kellar
Stewart Kellar
Attorney for George Hotz