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10
 11 UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

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

16 Plaintiff,

17 v.

18 GEORGE HOTZ; HECTOR MARTIN
 CANTERO; SVEN PETER; and DOES 1 through
 19 100,

20 Defendants.

CASE NO. CV11-0167 SI

**PLAINTIFF'S STATEMENT IN
 RESPONSE TO DEFENDANT GEORGE
 HOTZ'S SUPPLEMENTAL BRIEF ON
 PERSONAL JURISDICTION**

Judge: Hon. Susan Illston

1 Plaintiff Sony Computer Entertainment America LLC (“SCEA”) respectfully submits
2 this statement in response to the supplemental brief and declarations submitted by
3 Defendant George Hotz (“Hotz”).

4 I. **HOTZ HAS DONE “SOMETHING MORE” BY AFFIRMATIVELY DIRECTING HIS
5 ILLEGAL ACTIVITIES AT SCEA BASED IN FOSTER CITY, CALIFORNIA**

6 Hotz attempts to analogize his conduct to a mere operator of a passive web site that
7 just so happens to be accessible in California. There is nothing, however, about Hotz’s
8 activities aimed at SCEA’s California business that can be described as “passive.” Hotz did
9 not merely make a few postings on a website, but rather he affirmatively induced and
10 encouraged PlayStation®3 computer entertainment system (“PS3 System”) consumers to
11 use his illegal circumvention devices with the knowledge that this activity would directly harm
12 SCEA in this District. Hotz’s conduct was deliberately targeted and aimed at SCEA in
13 California, and it had the predictable effect of causing extreme harm to SCEA at its
14 headquarters in Foster City, California. Hotz is not permitted to avoid California jurisdiction
15 by aiming his malicious conduct at a California business from a New Jersey address.

16 In his supplemental brief, Hotz tries to refute this fact by characterizing his website as
17 “passive” and claiming that he “neither encourages nor facilitates illegal circumvention
18 devices to be downloaded on his website.” Supplemental Brief, pp. 12, 13. This is false.
19 Not only does Hotz publish the “Metldr Keys” on his website, **he also provides links on his
20 website to his other circumvention devices, including the 3.55 Firmware JailBreak and
21 the Signing Tools, encouraging and enabling individuals to download these
22 circumvention devices, and thus facilitating video game piracy.** See Declaration of
23 Ryan Bricker filed on January 11, 2011 (“Bricker Decl.”), ¶¶22, 21, Exhs. U, T. And contrary
24 to his after-the fact denials, Hotz deliberately aimed his conduct at SCEA in this District when
25 he published the “Metldr Keys” on his website and wrote to SCEA: **“if you want your next**

1 ***console to be secure, get in touch with me.***” Bricker Decl., ¶22, Exh. U.¹ In addition,
 2 Hotz has touted his illegal hacking exploits on his interactive “On the PlayStation 3” blog
 3 (Second Supplemental Declaration of Ryan Bricker filed on January 13, 2011, ¶4, Exh. C
 4 (“Second Suppl. Bricker Decl.)). On that blog, Hotz openly interacts with others regarding
 5 his hacking of the PS3 System.² Additionally, Hotz has used other interactive tools based in
 6 this District, such as Twitter and YouTube, to report on his hacking of the PS3 System. *Id.* at
 7 ¶¶2-3, Exhs. A-B; Bricker Decl., ¶24, Exh. W.

8 As the above demonstrates, Hotz’s unlawful conduct – the unauthorized accessing
 9 of the PS3 System, circumvention of its technological protection measures, and trafficking
 10 in circumvention devices that enable the piracy of video games – is both intentionally aimed
 11 at and had the effect of injuring SCEA in the Northern District of California where it has its
 12 principal place of business.³ Hotz was well aware of the impact of his conduct on SCEA
 13 and game publishers. Bricker Decl., ¶27, Exh. Z. Consequently, there can be no doubt
 14 that Hotz’s unlawful conduct satisfies the Ninth Circuit’s test of “something more” indicating
 15 that Hotz “purposefully (albeit electronically) directed his activity in a substantial way to the
 16 forum state.” *Cybersell, Inc. v. Cybersell, Inc.*, 130 F. 3d 414, 418 (9th Cir. 1997);
 17 *Panavision Int’l, L.P. v. Toebben*, 141 F.3d 1316, 1320 (9th Cir. 1998). To find otherwise
 18 would allow a hacker to intentionally distribute circumvention devices in California with the
 19 knowledge that a California business is being harmed, while preventing a California court

21 ¹ In his declaration, Hotz *now* summarily denies that he sought employment from SCEA.
 22 Declaration of George Hotz (“Hotz Decl.”), ¶15. It does not matter, however, how he now
 23 retroactively characterizes his conduct – the fact remains that his statement conclusively
 24 demonstrates that his conduct was expressly targeted at SCEA in California. Indeed, Hotz
 25 even states that “[i]t would be fun to be on the other side.” Bricker Decl., ¶22, Exh. U.

26 ² In attempting to avoid jurisdiction, Hotz disingenuously argues that since Google maintains
 27 the site, Google is responsible for its interactivity and not Hotz. Yet it is Hotz who chose to
 28 blog about his unlawful conduct and to have discussions with third parties regarding that
 same conduct over the Internet.

³ Hotz’s conduct also has had the effect of harming other publishers of games for the
 PlayStation 3, many of whom are based or located in this District, including, for example,
 Electronic Arts (Redwood City).

1 from taking action to protect its residents who have been tortiously injured. See
 2 *Panavision*, 141 F. 3d at 1324.

3 **II. HOTZ FAILS TO UNEQUIVOCALLY DENY HOLDING A PLAYSTATION**
 4 **NETWORK (“PSN”) ACCOUNT**

5 Hotz again fails to unequivocally deny that he has, or has ever had, a PSN account.
 6 In his supplemental declaration, Hotz merely – and carefully – denies that he has ever
 7 accessed the PSN *to install a firmware update*. See Hotz Decl., ¶¶11-13.⁴ Hotz also claims
 8 to have accessed the PS3 System firmware not through the proper channels of the SCEA
 9 website, but instead “via direct download links available on the internet.” Hotz Decl., ¶11.
 10 Though he disavows association with various email addresses in SCEA’s database, he
 11 pointedly does not state that he has not now, nor has he ever, maintained a PSN account.
 12 His failure to unequivocally deny that he has held a PSN account is telling.

13 Hotz’s attorney further submits a declaration attempting to show that the PSN does
 14 not have to be accessed when updating firmware via the PlayStation website. See
 15 Declaration of Yasha Heidari. However, even if the firmware was downloaded pursuant to
 16 the PlayStation website as done by Hotz’s attorney, the user is still subject to the PlayStation
 17 website’s terms and conditions at <http://us.playstation.com/support/termsfuse/index.htm>.
 18 These terms prohibit, among other things, “using, making or distributing unauthorized
 19 software or hardware in conjunction with the Sites, or taking or using any data from the Sites
 20 to design, develop or update unauthorized software or hardware.” ***The terms also include***
 21 ***a forum selection clause and consent to jurisdiction in San Mateo County, California.***
 22 They also incorporate by reference the terms of the PSN User Agreement. Therefore, a user
 23 who downloads the firmware via the PlayStation website, instead of the PSN, nonetheless
 24 consents to jurisdiction in California.

25 _____
 26 ⁴ The issue of whether Hotz has a PSN account does not need to be resolved at this time.
 27 As demonstrated in SCEA’s supplemental briefing, Hotz has had more than the minimum
 28 contacts necessary to establish jurisdiction by this Court.

1 **III. CONCLUSION**

2 Hotz's unlawful conduct is intentionally directed at SCEA in the Northern District of
3 California and is causing substantial harm to SCEA here, warranting this Court's exercise of
4 personal jurisdiction. Hotz has failed to show otherwise. Accordingly, SCEA respectfully
5 requests that the Court grant its *Ex Parte* Motion for a Temporary Restraining Order.
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7 DATED: January 24, 2011

Respectfully submitted,

8 KILPATRICK TOWNSEND & STOCKTON LLP
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10 By: /s/James G. Gilliland, Jr.

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