

Sony To Pay \$7.8M To 4M PlayStation Gamers In Antitrust Fight

By **Gina Kim**

Law360 (December 16, 2024, 6:44 PM EST) -- Sony Interactive Entertainment will pay \$7.85 million to more than 4 million gamers to settle a proposed class action accusing the company of overcharging PlayStation Store customers via a monopoly on downloadable game cards, according to a motion for preliminary approval filed Friday in California federal court.

In a **33-page brief** filed in the Northern District of California, proposed class plaintiffs' counsel asked U.S. District Judge Araceli Martinez-Olguin for her preliminary blessing of the settlement that will bring the 3-year-old litigation closer to its end.

"Here, a favorable outcome at class certification and trial and a damages award against defendant was far from assured. Plaintiff would need to prevail on class certification and, based on defendant's motion to deny class certification, the issue remained unresolved whether a class action waiver provision in [Sony Interactive's] agreements barred the claims asserted by potential class members," the motion said. "Plaintiff would have to overcome numerous substantive defenses at summary judgment and at trial and succeed on any potential appeal. Defendant, and experts it is likely to offer, would surely contest every theory of liability and measure of damages."

Three years ago, gamer Agustin Caccuri **filed a lawsuit** seeking to represent more than 10 million customers who he said were overcharged by the monopolization of PlayStation's digital store, after Sony issued a prohibition blocking retailers from selling PlayStation game download codes. The rule went into effect April 1, 2019, and it made PlayStation Store the only place to buy digital versions of the console's games.

Prior to that rule, Sony had permitted third-party retailers like Best Buy, Target, Walmart, Amazon, GameStop and others to sell PlayStation game-specific vouchers.

Caccuri alleged in his initial filing that the decision allowed Sony to charge supracompetitive prices for digital PlayStation games that are even pricier than their physical versions that came on a disk and had to be packaged and distributed through retailers.

According to Friday's preliminary approval motion, the proposed settlement class consists of approximately 4.4 million members. The plaintiffs urged the court to grant preliminary approval, as there were several hurdles facing the customers if litigation continued.

"Here, there were a number of issues which made this case difficult and potentially problematic for plaintiffs," the Dec. 13 preliminary approval motion said. "First, the number of games sold at retailers was much smaller than originally contemplated making the games in question here a small subset of the digital games sold by [Sony Interactive] through the PlayStation Store."

Less games meant the class size would be smaller than originally thought, the motion continued. Furthermore, when retailers were still selling digital games, they were charging the same price as Sony or even more, which could result in the amount of damages to be even smaller, the plaintiffs argued.

Additionally, the motion said, "the class action waiver issue remained outstanding under the

court's ruling on [Sony Interactive's] denial of class certification motion and would be addressed at the class certification stage of this proceeding. That issue created significant uncertainty going forward."

Sony Interactive was also ready to mount defenses to the plaintiffs' liability and damages theories, including whether the purported market for digital PlayStation games was a valid antitrust market and whether Sony tried to monopolize or did monopolize this alleged market for such games. Sony was also prepared to fight over whether the gamers suffered an antitrust harm caused by Sony's alleged monopolization of the market for such games, the plaintiffs noted.

There was also a question regarding damages suffered by the gamers, because of what the retailers were charging for digital games, the motion said.

Class counsel said they plan to seek attorney fees that won't exceed a third of the settlement amount, and Sony has the right to challenge that amount if it so chooses, the motion said.

The plaintiffs have also asked the court to hold a hearing on the preliminary approval motion on Jan. 23.

Jeff S. Westerman of Zimmerman Reed LLP, one of the attorneys for the customers, told Law360 in an email late Monday afternoon that the plaintiffs' team had no comment.

Representatives for the SIE defendants did not immediately return inquiries seeking comment Monday.

The proposed class is represented by Michael M. Buchman of Motley Rice LLC, Jeff S. Westerman of Zimmerman Reed, Joseph R. Saveri, Ronnie S. Spiegel and Elissa A. Buchanan of Joseph Saveri Law Firm LLP, Blake Hunter Yagman of Leeds Brown Law PC, and Peggy J. Wedgworth and Elizabeth McKenna of Milberg Coleman Bryson Phillips Grossman PLLC.

Sony is represented by Meredith R. Dearborn, Shawn M. Estrada and Andrew C. Finch of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Agustin Caccuri v. Sony Interactive Entertainment LLC, case number 3:21-cv-03361, in the U.S. District Court for the Northern District of California.

--Editing by Michael Watanabe.

Update: This article has been updated with reflect a statement from the plaintiffs' counsel.