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ORIGINAL  
FILED  
JUN - 5 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

ADR

14 GEOFFREY PECOVER and JEFFREY )  
LAWRENCE, on Behalf of Themselves and All )  
15 Others Similarly Situated, )

16 Plaintiffs, )

17 v. )

18 ELECTRONIC ARTS INC., a Delaware )  
Corporation, )

19 Defendant. )  
20

No.

C08-02820

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

JL

1 Plaintiffs, by and through their attorneys, based on their individual experiences, the  
2 investigation of counsel, and information and belief allege as follows:

3 **INTRODUCTION**

4 1. This suit arises out of the blatantly anticompetitive conduct of Electronic Arts Inc., a  
5 multi-billion dollar interactive entertainment software company that produces numerous interactive  
6 football software products including the Madden NFL, NCAA Football and Arena Football titles.  
7 Through an unlawful and anticompetitive series of exclusive agreements with the National Football  
8 League, the NFL Players Union, Arena Football League and the National Collegiate Athletic  
9 Association (“NCAA”), Electronic Arts has driven its competition out of the market for interactive  
10 football software, including most significantly Take Two Interactive Software, Inc., the maker of the  
11 interactive football software title NFL 2K5 and has prevented additional competitors from entering  
12 the market. As a direct result of this anticompetitive conduct, the price of interactive football  
13 software has soared: Prior to signing the exclusive agreements referred to above, Electronic Arts  
14 charged \$29.95 for its flagship product Madden NFL. Immediately after the exclusive agreements  
15 entered into effect – and the effective withdrawal of its only competitor from the market – Electronic  
16 Arts increased its price for that software nearly *seventy percent* to \$49.99.

17 **PARTIES**

18 2. Plaintiff Geoffrey Pecover is a resident of Washington, D.C. Mr. Pecover purchased a  
19 copy of Madden 2008 from a Best Buy store located in the District of Columbia in August of 2007.

20 3. Plaintiff Jeffrey Lawrence is a resident of California. Mr. Lawrence purchased and/or  
21 licensed a copy of Madden NFL 2007 from a Gamestop store located in California in 2007.

22 4. Defendant Electronic Arts Inc., a Delaware corporation, is a multi-billion dollar  
23 interactive entertainment software company that produces the Madden NFL videogame. Its principal  
24 place of business is Redwood City, California.

25 **JURISDICTION AND VENUE**

26 5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question)  
27 and 28 U.S.C. § 1337 (commerce and antitrust regulation), as this action arises under Section 2 of the  
28 Sherman Act, 15 U.S.C. § 2, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

1 The Court has supplemental subject matter jurisdiction of the pendant state law claims under 28  
2 U.S.C. § 1367. The Court also has diversity jurisdiction over this action pursuant to 28 U.S.C.  
3 § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, and there are  
4 members of the Class who are citizens of a different state than the Defendant.

5 6. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and Sections 4 and  
6 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22, because Defendant resides, transacts business or is  
7 found within this District, and a substantial part of the events giving rise to the claims arose in this  
8 District.

9 7. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of this  
10 Court is appropriate because Defendant's headquarters and principal place of business is in Redwood  
11 City, California. Because this action arises in the county of San Mateo, pursuant to Northern District  
12 of California, Local Rule 3-2(d), assignment to either the San Francisco Division or the Oakland  
13 Division is proper.

#### 14 **RELEVANT MARKET**

15 8. Interactive football software is a distinct market. The geographic market is the entire  
16 United States. Electronic Arts has the ability to raise the price of its interactive football software  
17 substantially for a significant period of time without consumers substituting another product. As a  
18 result of its anticompetitive conduct detailed below, Electronic Arts now has a monopoly on the  
19 market for interactive football software.

#### 20 **ANTICOMPETITIVE CONDUCT**

21 9. In 1989, Electronic Arts released the first version of the Madden NFL football game.  
22 The game soon dominated the market and survived in this dominant position despite challenges over  
23 the intervening years by smaller companies such as Midway and 989 Sports and even well funded  
24 companies such as Microsoft.

25 10. In 2004, Sega partnered with Take Two Interactive, Inc. one of the largest makers of  
26 interactive software in the world to update and distribute its existing interactive football software.  
27 The result, NFL 2K5, was released to rave reviews. The Official Xbox Magazine gave it its Editors'  
28 Choice award and deemed it "the best NFL title on the Xbox." GamePro.com and IGN.com, both

1 highly influential websites covering the football interactive software market, similarly gave NFL  
2 2K5 Editors' Choice awards. The reviewer at IGN called NFL 2K5 "one of the finest sports  
3 experiences I've had the pleasure of enjoying."

4 11. NFL 2K5 combined award-winning gameplay with ground breaking prices. Despite  
5 NFL 2K5's superior quality, Take Two priced the game nearly thirty dollars below the Madden NFL  
6 title. Faced with a serious competitor for the first time, Electronic Arts was forced to lower its  
7 prices. Three months after the entry of NFL 2K5 into the market, in November 2004, Electronic Arts  
8 lowered the price of Madden NFL from \$49.95 to \$29.95.

9 12. This vigorous competition benefited consumers. Electronic Arts could have  
10 continued to compete by offering a lower price and/or a higher quality product. Instead, Electronic  
11 Arts quickly entered into a series of exclusive agreements with the only viable sports football  
12 associations and leagues in the United States: the National Football League ("NFL"), the Arena  
13 Football League ("AFL") and NCAA Football.

14 13. By far the most important football league from the perspective of interactive football  
15 software makers is the NFL. The NFL's fan base as well as its team and player recognition are  
16 unrivaled by any other professional football league or amateur athletic league. In December 2004,  
17 Electronic Arts signed an exclusive agreement with the NFL and the NFL Players Union that  
18 prevented any other company from producing NFL branded interactive football software.

19 14. Shortly thereafter, on or about January 10, 2005, Electronic Arts announced an  
20 exclusive agreement with the AFL, a competitor to the NFL, making it the exclusive provider of  
21 AFL branded interactive football software. Approximately three months later, in April 2005,  
22 Electronic Arts signed an agreement with the NCAA through its licensing arm College Licensing  
23 Company, Inc. to become the exclusive provider of NCAA Football branded interactive football  
24 software.

25 15. As Electronic Arts well knew, consumers demand that the teams and players in  
26 interactive football software be identified with actual teams and players. This is only achievable  
27 through a license with a sports league and associated players associations. There is essentially no  
28 demand and therefore no market for interactive football software that is not based on real life teams

1 and/or players. Electronic Arts recognizes this fact in its annual report to investors where it notes  
2 that if it were “unable to maintain” licenses with “major sports leagues and players associations” its  
3 “revenue and profitability will decline significantly.”

4 16. By signing the exclusive agreement with the NFL, Electronic Arts immediately killed  
5 off Take Two’s NFL 2K5 software, the only competing interactive football product of comparable  
6 quality to its Madden NFL franchise. Through its agreements with the NCAA and AFL, Electronic  
7 Arts prevented Take Two and others from re-entering the market with non-NFL branded interactive  
8 football software. Once again without a competitor, Electronic Arts raised its prices dramatically.  
9 Specifically, Electronic Arts raised the price of the Madden 2006 videogame (released in August of  
10 2005) nearly seventy percent to \$49.95. Electronic Arts currently sells interactive football software  
11 for up to \$59.95.

12 17. Since signing the series of exclusive and anticompetitive agreements outlined above,  
13 Electronic Arts continues to solidify its stranglehold on the market for interactive football software.  
14 On February 12, 2008, Electronic Arts extended its anticompetitive agreements with the NFL and the  
15 NFL Players Union until 2012. Less than two weeks later, Electronic Arts announced a \$2 billion  
16 offer for Take Two Interactive. A successful takeover of Take Two Interactive by Electronic Arts  
17 would remove one of the few companies with the ability and expertise to compete in the market for  
18 interactive football software in the event that the Electronic Arts exclusive agreements were  
19 terminated or voided by a court.

20 18. As a direct result of the unlawful anticompetitive actions alleged above, Electronic  
21 Arts gained a monopoly in the market for interactive football software.

22 **COMMON COURSE OF CONDUCT EMANATING FROM CALIFORNIA**

23 19. Upon information and belief, the unlawful course of conduct outlined above was  
24 created, adopted, ratified and/or implemented in the corporate headquarters of Electronic Arts located  
25 in Redwood City, California. Upon information and belief, the Electronic Arts executives  
26 responsible for the series of anticompetitive agreements outlined above are based in California and a  
27 substantial part, if not all, the anticompetitive conduct took place in California. Therefore,  
28 application of California law to a nationwide class is appropriate.

1 **ANTITRUST INJURY**

2 20. But for Electronic Arts' exclusive agreements with the NFL, the Players Union, the  
3 AFL and NCAA, Take Two and its partners could have developed subsequent versions of NFL 2K5  
4 and other competitors could have entered the market for interactive football software. But for  
5 Electronic Arts' exclusive agreements with the NFL, the Players Union, AFL and NCAA, the price  
6 of interactive football software produced by Electronic Arts would be substantially lower than its  
7 current price. Moreover, consumers would have enjoyed additional features and overall higher  
8 quality interactive football software.

9 21. As a direct result of Defendant's anticompetitive actions, competition in the market  
10 for interactive football software has been restrained.

11 **CLASS ACTION ALLEGATIONS**

12 22. Plaintiffs sue on their own behalf and on behalf of a class of persons pursuant to  
13 Federal Rule of Civil Procedure 23. The Class consists of all persons in the United States who  
14 purchased and/or licensed from Electronic Arts a copy of interactive football software with a release  
15 date of August 2005 or later. Excluded from the class are (a) persons purchasing directly from  
16 Electronic Arts and (b) Defendants, their employees, co-conspirators, officers, directors, legal  
17 representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies.

18 23. In the event California law is not applied to the claims of all Class members for  
19 damages regardless of where they reside, Plaintiffs will seek certification of the following subclass  
20 for damages: All persons in an Included State who purchased and/or licensed from Electronic Arts a  
21 copy of interactive football software with a release date of August 2005 or later. Excluded from the  
22 class are (a) persons purchasing directly from Electronic Arts and (b) Defendants, their employees,  
23 co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly  
24 owned subsidiaries or affiliated companies. For purposes of the subclass, the "Included States" are  
25 the states listed in Paragraphs 50-69 and 73-91 of this Complaint.

26 24. The persons in the Class are so numerous that individual joinder of all members is  
27 impracticable under the circumstances of this case. Although the precise number of such persons is  
28 unknown, the exact size of the Class is easily ascertainable, as each class member can be identified

1 by using Defendant's records and/or the records of its distributors or retailers. Plaintiffs are  
2 informed and believe that there are many thousands of Class members.

3 25. There are common questions of law and fact specific to the Class that predominate  
4 over any questions affecting individual members, including:

- 5 (a) Whether interactive football software constitutes a relevant market;
- 6 (b) Whether Defendant has a monopoly on the market for interactive football software;
- 7 (c) Whether Defendant gained this monopoly unlawfully;
- 8 (d) Whether Defendant's actions in entering the exclusive agreements alleged above  
9 violated California law;
- 10 (e) Whether consumers and class members have been damaged by Defendant's conduct;
- 11 (f) Whether punitive damages are appropriate;
- 12 (g) Whether Defendant should disgorge unlawful profits; and
- 13 (h) The amount of any damages.

14 26. Plaintiff's claims are typical of the Class' claim, as they arise out of the same course  
15 of conduct and the same legal theories as the rest of the Class, and Plaintiffs challenge the practices  
16 and course of conduct engaged in by Defendant with respect to the Class as a whole.

17 27. Plaintiff will fairly and adequately protect the interests of the class. Plaintiffs have  
18 retained class counsel who are able and experienced class action litigators.

19 28. Resolution of this action on a class-wide basis is superior to other available methods  
20 and is a fair and efficient adjudication of the controversy because in the context of this litigation, no  
21 individual class member can justify the commitment of the large financial resources to vigorously  
22 prosecute a lawsuit against Defendant. Separate actions by individual class members would also  
23 create a risk of inconsistent or varying judgments, which could establish incompatible standards of  
24 conduct for Defendant and substantially impede or impair the ability of class members to pursue their  
25 claims. A class action also makes sense because Defendant has acted and refused to take steps that  
26 are, upon information and belief, generally applicable to thousands of individuals, thereby making  
27 injunctive relief appropriate with respect to the Class as a whole.  
28

**JURY TRIAL DEMANDED**

29. Plaintiff hereby demands a trial by jury on all issues triable of right by jury.

**FIRST CAUSE OF ACTION**

**VIOLATION OF THE SHERMAN ACT  
(15 U.S.C. § 2)**

30. Each of the foregoing allegations is incorporated in this claim for relief.

31. The relevant product market is the interactive football software market.

32. The relevant geographic market is the entire United States.

33. Electronic Arts possesses monopoly power in the relevant market.

34. Substantial barriers to entry and expansion exist in the relevant market.

35. Electronic Arts has the power to control prices and exclude competition in the relevant market.

36. Since 2004, Defendant has engaged in conduct with anticompetitive effects to: (a) unlawfully maintain and enhance its monopoly in the relevant market and to keep prices high; and (b) stifle competition and eliminate consumer choice through unlawful exclusionary behavior designed to keep Take Two and other competitors and potential competitors weak, undersized and unable to produce a viable substitute for Defendant's interactive football software.

37. Defendant has also combined or conspired with others in furtherance of its efforts to monopolize the relevant market for interactive football software.

38. There is no legitimate business justification for Defendant's conduct.

39. Plaintiffs and the Class members have been injured and will continue to be injured in their businesses and property by payment more for interactive football software purchased indirectly from Electronic Arts than they would have paid or would pay in the future in the absence of Defendant's unlawful acts.

40. Plaintiffs and the Class are entitled to an injunction that terminates the ongoing violations alleged in this Complaint.

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**SECOND CAUSE OF ACTION**

**VIOLATION OF THE CARTWRIGHT ACT  
(California Business & Professions Code §§ 16720, *et seq.*)**

41. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

42. Since 2004 and up to the present time, Defendant conspired, and agreed and continues to combine, conspire and agree to unreasonably restrain and monopolize the market for interactive football software, in violation of California Business and Professions Code sections 16720, *et seq.*, by signing the exclusive agreements as alleged above.

43. As a direct consequence of the agreements, competition in the market for interactive football software has been restrained, suppressed and eliminated. Class members have been deprived of the benefit of a free, competitive marketplace for interactive football software.

**THIRD CAUSE OF ACTION**

**VIOLATION OF THE UNFAIR COMPETITION ACT  
(California Business & Professions Code §§ 17200, *et seq.*)**

44. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

45. Defendant has engaged in and is still engaged in acts of unfair competition, as defined in California Business and Professions Code sections 17200, *et seq.*, including but not limited to violation of the Sherman Act, 15 U.S.C. § 2 and the California Business and Professions Code sections 16720, *et seq.*, as alleged above.

**FOURTH CAUSE OF ACTION**

**UNJUST ENRICHMENT**

46. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

47. To the detriment of Plaintiff and members of the Class, Defendant has been and continues to be unjustly enriched as a result of the unlawful and/or wrongful conduct. Defendant has unjustly benefited through the sale of interactive football software at an inflated, anticompetitive monopoly price to consumers as well as the sale of advertising in its interactive football software.

1 48. Between the parties, it would be unjust for Defendant to retain the benefits attained by  
2 their actions. Accordingly, Plaintiffs and members of the Class seek full restitution of Defendant's  
3 enrichment, benefits and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct  
4 alleged herein.

5 **FIFTH CAUSE OF ACTION**

6 **(Violations of State Antitrust and Restraint of Trade Laws)**

7 49. Each of the foregoing allegations is incorporated in this claim for relief and this claim  
8 is alleged in the event that the Court does not apply California law on a nationwide basis.

9 50. Electronic Arts has violated Arizona Revised Stat. Code §§ 44-1401, *et seq.*

10 51. Electronic Arts has violated California Bus. & Prof. Code §§ 16700, *et seq.*

11 52. Electronic Arts has violated District of Columbia Code Ann. §§ 28-4503, *et seq.*

12 53. Electronic Arts has violated Iowa Code §§ 553.1, *et seq.*

13 54. Electronic Arts has violated Kansas Stat. Ann. §§ 50-101, *et seq.*

14 55. Electronic Arts has violated 10 Maine Rev. Stat. §§ 1101, *et seq.*

15 56. Electronic Arts has violated Michigan Comp. Laws. Ann. §§ 445.773, *et seq.*

16 57. Electronic Arts has violated Minnesota Stat. §§ 325D.52, *et seq.*

17 58. Electronic Arts has violated Mississippi Code Ann. §§ 75-21-1, *et seq.*

18 59. Electronic Arts has violated Nebraska Rev. Stat. §§ 59-801, *et seq.*

19 60. Electronic Arts has violated Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

20 61. Electronic Arts has violated New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

21 62. Electronic Arts has violated New York Gen. Bus. Law §§ 340, *et seq.*

22 63. Electronic Arts has violated North Carolina Gen. Stat. §§ 75-1, *et seq.*

23 64. Electronic Arts has violated North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

24 65. Electronic Arts has violated South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

25 66. Electronic Arts has violated Tennessee Code Ann. §§ 47-25-101, *et seq.*

26 67. Electronic Arts has violated Vermont Stat. Ann. 9 §§ 2453, *et seq.*

27 68. Electronic Arts has violated West Virginia Code §§ 47-18-1, *et seq.*

28 69. Electronic Arts has violated Wisconsin Stat. §§ 133.01, *et seq.*



1 92. As a direct and proximate result of Electronic Arts' unlawful conduct, class members  
2 in each of those states have been injured in that they paid more for interactive football software than  
3 they would have but for the anticompetitive conduct alleged above.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

6 A. Certification of the action as a Class Action pursuant to the California Code of Civil  
7 Procedure Rules of Court, and appointment of Plaintiffs as Class Representatives and their counsel of  
8 record as Class Counsel;

9 B. Restitution and/or Damages to class members for the purchase of the software;

10 C. Actual damages, statutory damages, punitive or treble damages, and such other relief  
11 as provided by the statutes cited herein;

12 D. Prejudgment and post-judgment interest on such monetary relief;

13 E. Equitable relief in the form of restitution and/or disgorgement of all unlawful or  
14 illegal profits received by Defendant as a result of the anticompetitive conduct alleged in herein;

15 F. Other appropriate injunctive relief;

16 G. The costs of bringing this suit, including reasonable attorneys' fees;

17 H. A declaration that the relevant agreements are null and void; and

18 I. All other relief to which Plaintiffs and members of the Class may be entitled at law or  
19 in equity.

20 DATED: June 5, 2008

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21 By   
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