

E-filing

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

ADR

JL

1 SHANA SCARLETT (217895)
HAGENS BERMAN SOBOL SHAPIRO LLP
2 715 Hearst Avenue, Suite 202
Berkeley, CA 94710
3 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
4 shanas@hbsslaw.com

5 STUART M. PAYNTER (226147)
THE PAYNTER LAW FIRM PLLC
6 1200 G Street N.W., Suite 800
Washington, DC 20005
7 Telephone: (202) 626-4486
Facsimile: (866) 734-0622
8 stuart@smplegal.com

9 Attorneys for Plaintiffs

10 [Additional counsel listed on signature page]

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

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

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 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

1 **SECOND CAUSE OF ACTION**

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

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

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

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

13 **THIRD CAUSE OF ACTION**

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

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

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

22 **FOURTH CAUSE OF ACTION**

23 **UNJUST ENRICHMENT**

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

26 47. To the detriment of Plaintiff and members of the Class, Defendant has been and
27 continues to be unjustly enriched as a result of the unlawful and/or wrongful conduct. Defendant has
28 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Facsimile: (866) 734-0622
stuart@smplegal.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com