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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBIN ANTONICK,

Plaintiff,

v.

ELECTRONIC ARTS INC,

Defendant.

No. C 11-01543 CRB

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT'S  
THIRD MOTION FOR SUMMARY  
JUDGMENT, DENYING AS MOOT  
DEFENDANT'S MOTION TO STRIKE**

On April 19, 2013, the Court held a hearing on Defendant Electronic Arts Inc.'s Third Motion for Summary Judgment (dkt. 290). At the conclusion of that hearing, the Court took Defendant's Motion under submission. The Court is mindful that the parties would like to know the Court's rulings as soon as possible in order to prepare for trial, which is set to begin in less than a month. Accordingly, the Court makes the following rulings, and will provide a detailed explanation for such rulings in a separate and subsequent order.

First, the Court finds that Antonick's contract claim for unpaid royalties is limited to derivative works within the meaning of United States copyright law.

Second, the Court finds that, of the similarities identified by Plaintiff's expert, only two – "field width" and "plays and formations" – are potentially protectable under copyright law, and that a jury should determine the issue of substantial similarity. Accordingly, the Court GRANTS the Motion as to all of the similarities other than those two.

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Third, the Court DENIES the Motion as to the other contract claims.

Fourth, the Court DENIES the Motion as to the fraud claim. The Court has serious concerns about the fraud claim, but finds that it will be in a better position to rule on that claim once the evidence has been presented at trial.

Fifth, as the Court does not rely on Garry Kitchen's report in resolving the Motion for Summary Judgment, EA's Motion to Strike that report (dkt. 300) is DENIED AS MOOT; EA may re-notice the Motion to Strike in connection with trial.

**IT IS SO ORDERED.**

Dated: April 25, 2013

  
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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE