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9 Ubisoft Entertainment, S.A. and Ubisoft, Inc.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

**CV 12 275 4**  
Case No.

**COMPLAINT FOR DECLARATORY  
RELIEF**

12  
13  
14 UBISOFT ENTERTAINMENT,  
S.A., a French corporation and  
15 UBISOFT, INC., a California  
corporation,  
16  
17 Plaintiffs,  
18  
19 v.  
20 JOHN L. BEISWENGER, an  
individual,  
21  
22 Defendant.  
23  
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**ORIGINAL  
FILED**

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**E-filing**

**NC**

1 Plaintiffs Ubisoft Entertainment, S.A. ("Ubisoft Entertainment") and Ubisoft,  
2 Inc. (sometimes collectively referred to herein as "Ubisoft" or "plaintiffs") file this  
3 complaint against defendant John L. Beiswenger ("Beiswenger" or "defendant"),  
4 and allege as follows:

5  
6 **INTRODUCTION**

7  
8 1. This case seeks a declaration of rights that Ubisoft's videogame,  
9 *Assassin's Creed*, does not infringe Beiswenger's alleged copyright in the novel,  
10 *Link*. Ubisoft is the publisher of *Assassin's Creed*. On April 17, 2012, Beiswenger  
11 filed a spurious lawsuit in the United States District Court for the Middle District of  
12 Pennsylvania against Ubisoft, asserting that *Assassin's Creed* infringed the  
13 copyright in *Link*. In addition to seeking over \$5 million in damages, Beiswenger  
14 also sought to enjoin Ubisoft from continuing to sell the already-released *Assassin's*  
15 *Creed* games and to prevent Ubisoft from releasing *Assassin's Creed III* in October  
16 2012.

17 2. Beiswenger's infringement claims were entirely meritless and were  
18 based on patently non-copyrightable elements contained in the two works. These  
19 elements included the works' alleged shared references to such unprotectable,  
20 generic elements and *scenes a faire* as the theme of "good vs. evil" and characters  
21 "talk[ing] in the first person," as well as their common use of the idea of "ancestral  
22 memory" – a concept that has existed in the cultural consciousness and prior art for  
23 decades preceding both works' publications.

24 3. On May 29, 2012, Beiswenger voluntarily dismissed his complaint.  
25 However, as Beiswenger's dismissal is "without prejudice," his claim could be re-  
26 filed at any time and, thus, remains live and justiciable.

27 4. Accordingly, Ubisoft now seeks a judicial declaration to establish,  
28 once and for all, that *Assassin's Creed* does not directly or indirectly infringe

1 Beiswenger's alleged copyright in *Link*. A declaration is necessary to enable  
2 Ubisoft to continue to develop and market creative content under the *Assassin's*  
3 *Creed* brand free from the cloud that Beiswenger's meritless claims have placed  
4 over Ubisoft's right to do so.

5  
6 **JURISDICTION AND VENUE**  
7

8 5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §  
9 2201 and the Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has subject  
10 matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and 1332(a).

11 6. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b), in  
12 that a substantial part of the events or omissions giving rise to the claim occurred,  
13 and/or a substantial part of the property that is the subject of this action is situated  
14 in, this judicial district. Venue is further proper under 28 U.S.C. § 1400(a) in that  
15 Beiswenger may be found in this Judicial District.

16 7. This Court has personal jurisdiction over Beiswenger because, on  
17 information and belief, he has transacted and solicited business in this judicial  
18 district, including but not limited to, by advertising and offering the novel *Link* for  
19 sale in California, and specifically in this judicial district.

20  
21 **THE PARTIES**  
22

23 8. Ubisoft Entertainment is a French corporation organized and existing  
24 under the laws of France, with its principal place of business located in Montreuil,  
25 France. Ubisoft Entertainment is one of the world's largest developers and  
26 publishers of videogames, including the hugely successful and widely known  
27 *Assassin's Creed* videogame series.  
28

1 9. Ubisoft, Inc. is a corporation organized and existing under the laws of  
2 the State of California, with its principal place of business located in San Francisco,  
3 California. Ubisoft, Inc. is a wholly-owned United States subsidiary of Ubisoft  
4 Entertainment and is in the business of distributing in the United States videogames  
5 published by Ubisoft Entertainment, including *Assassin's Creed*. Collectively,  
6 Ubisoft Entertainment and Ubisoft, Inc. are referred to herein as "Ubisoft" or  
7 sometimes, "plaintiffs."

8 10. Ubisoft is informed and believes, and based thereon alleges, that  
9 Beiswenger is an individual residing in Strasburg, Pennsylvania. Ubisoft is further  
10 informed and believes, and based thereon alleges, that Beiswenger is the sole author  
11 of the novel *Link*, published in or around 2003 ("*Link*").

### 12 RELEVANT FACTS

13  
14  
15 11. In or about 2007, Ubisoft released a new, historical fiction, action  
16 adventure videogame entitled *Assassin's Creed*. In *Assassin's Creed*, players of the  
17 game take on the role of Desmond Miles, a man who is imprisoned and forced to  
18 relive the experiences of one of his ancestors, Altair ibn La'Ahad.

19 12. The *Assassin's Creed* game was a critical and financial success. Since  
20 the first game was released in 2007, Ubisoft has developed and released three more  
21 *Assassin's Creed* videogames – "Assassin's Creed II" in 2009, "Assassin's Creed  
22 Brotherhood" in 2010, and "Assassin's Creed: Revelations" in 2011. Ubisoft also  
23 developed and released numerous other materials relating to the *Assassin's Creed*  
24 series, including but not limited to several "Official Game Guides," a companion  
25 encyclopedia, several comic books, and various advertising trailers and promotional  
26 materials. Collectively, the *Assassin's Creed* games and all supporting materials  
27 are referred to herein collectively as "*Assassin's Creed*." A fifth game in the  
28

1 *Assassin's Creed* series, entitled *Assassin's Creed III*, is scheduled to be released in  
2 October 2012.

3 13. On or about April 17, 2012, Beiswenger filed a lawsuit against Ubisoft  
4 and several related corporate entities in the United States District Court for the  
5 Middle District of Pennsylvania (Case No. 1:12-cv-00717CCC), alleging that  
6 *Assassin's Creed* infringes Beiswenger's copyright in *Link* (the "Prior Action"). In  
7 the Prior Action, Beiswenger sought over \$5 million in damages and both  
8 preliminary and permanent injunctions seeking to, among other things, halt the  
9 release of *Assassin's Creed III*.

10 14. *Link* is a novel. On information and belief, *Link* utilizes the plot  
11 device of a religiously-motivated product research firm and its accidental invention  
12 of a device that allows users to access the memories of their ancestors to argue the  
13 case for the existence of the human soul, God and Jesus of Nazareth as the son of  
14 God, creationism, and the establishment of Christian religious dogma as fact in  
15 modern science and government.

16 15. In the Prior Action, Beiswenger claimed that Ubisoft has infringed the  
17 copyright in *Link* because, among other things: (i) both *Assassin's Creed* and *Link*  
18 contain such archetypal elements as "spiritual and biblical tones," make use of the  
19 age-old theme of "good vs. evil," and contain references to such generic, stock  
20 terms as "ancestors," "synchronize," and "assassins;" (ii) both feature main  
21 characters who "talk in the first person;" and (iii) both concern a "device and  
22 process" by which characters are able to access and relive the memories of their  
23 ancestors.

24 16. Setting aside the fact that common narrative devices such as speaking  
25 in the first person and the archetypal theme of good vs. evil are not copyrightable  
26 elements, the allegations in the Prior Action regarding the two works' references to  
27 a process by which one can access "ancestral memories" is not actionable under any  
28 copyright theory. The concept of ancestral memories has existed in the cultural

1 consciousness for decades — long before the publication of either *Link* or  
2 *Assassin's Creed* — and can be found in such well-known prior art as Frank  
3 Herbert's *Dune* series of novels and short story, *The GM Effect*, the Doc Savage  
4 novel, *They Died Twice*, Douglas Adams' 1979 novel, *The Hitchhiker's Guide to*  
5 *the Galaxy*, the 1975 television series, *The Invisible Man*, and John Carpenter's  
6 1982 film, *The Thing*, to name just a few. Indeed, a Google search of the words  
7 "ancestral memories" on the internet returns over 3,000,000 hits. Moreover,  
8 *Assassin's Creed* and *Link* contain numerous and substantial dissimilarities.

9 17. On May 29, 2012 Beiswenger filed a dismissal of the entire Prior  
10 Action without prejudice. Given that the dismissal was without prejudice, counsel  
11 for Ubisoft in the Prior Action expressly asked Beiswenger's counsel whether  
12 Beiswenger intended to re-file, in response to which Beiswenger's counsel said, "I  
13 don't have that information."

14 18. Beiswenger's decision not to dismiss the Prior Action with prejudice,  
15 combined with his counsel's inability to state whether or not Beiswenger intended  
16 to re-file his claims, means the controversy initiated by Beiswenger persists and  
17 remains live and justiciable as between the parties. There is nothing to prevent  
18 Beiswenger from re-filing his action now, or even, prejudicially, on the eve of  
19 Ubisoft's upcoming launch of *Assassin's Creed III*.

20  
21 **CLAIM FOR RELIEF**

22 **(Declaratory Relief)**

23  
24 19. Ubisoft realleges and incorporates by reference the allegations  
25 contained in paragraphs 1 through 18, inclusive, as though they were fully set forth  
26 herein.

27 20. By reason of the foregoing facts, an actual controversy has arisen and  
28 exists between the parties as to whether *Assassin's Creed* infringes Beiswenger's

1 alleged copyright in *Link*. Ubisoft contends that *Assassin's Creed* does not infringe  
2 any alleged rights of Beiswenger existing under the U.S. Copyright Act. Ubisoft is  
3 informed and believes, and based thereon alleges, that Beiswenger contends to the  
4 contrary.

5 21. A judicial declaration is necessary and appropriate at this time in light  
6 of Beiswenger's explicit, remaining threat of litigation. A judicial declaration is  
7 further necessary and appropriate so that Ubisoft may ascertain its rights to  
8 continue developing, marketing and selling *Assassin's Creed*. Ubisoft will be  
9 prejudiced and may suffer injury unless relief is granted because of the cloud placed  
10 over its development and sale of *Assassin's Creed* by Beiswenger's threat of  
11 litigation.

12 22. In view of the foregoing, an actual controversy has arisen and exists  
13 between Ubisoft and Beiswenger within the meaning of the Declaratory Judgment  
14 Act, 28 U.S.C. § 2201. Accordingly, Ubisoft hereby requests a declaration of this  
15 Court under the provisions of 28 U.S.C. § 2201, setting forth the respective rights  
16 and other legal relations of Ubisoft and Beiswenger. In particular, Ubisoft requests  
17 a declaration that *Assassin's Creed* does not directly or indirectly infringe  
18 Beiswenger's alleged copyright in *Link*.

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21  
22 **PRAYER FOR RELIEF**

23  
24 WHEREFORE, Ubisoft prays for judgment against Beiswenger as follows:  
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26 1. For a declaration that Ubisoft has not infringed any copyrights or  
27 copyright interests owned or held by defendant in *Link*;

28 2. For an award of the costs, expenses and attorneys' fees incurred by

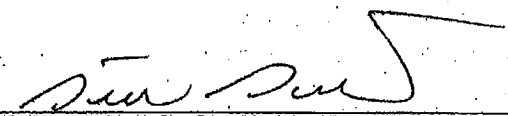
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Ubisoft herein; and

3. For such other and further relief as the Court deems just and proper.

DATED: May 29, 2012

GREENBERG GLUSKER FIELDS  
CLAMAN & MACTINGER LLP

By:   
STEPHEN S. SMITH (SBN 166539)  
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