

FILED  
09 SEP -4 PM 5:06  
RICHARD W. WIEKING  
CLERK: U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 David H. Weinstein (SBN 43167)  
WEINSTEIN KITCHENOFF & ASHER  
2 1845 Walnut Street, Suite 1100  
Philadelphia, Pennsylvania 19146  
3 Telephone: (215) 545-7200  
Facsimile: (215) 545-6535  
4 Email: weinstein@wka-law.com

5 Attorneys for Plaintiff

6 [Additional counsel listed on signature page]

7

8

9

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BZ

10

11 BRYON BISHOP, Individually and On Behalf  
of All Others Similarly Situated,

CIVIL ACTION NO.: \_\_\_\_\_

**CV 09 4128**

12

Plaintiff,

COMPLAINT - CLASS ACTION

13

v.

14

ELECTRONIC ARTS, INC., NATIONAL  
COLLEGIATE ATHLETIC ASSOCIATION,  
15 and COLLEGIATE LICENSING COMPANY,

DEMAND FOR JURY TRIAL

16

Defendants.

17

18

19

Plaintiff Bryon Bishop, by and through his attorneys, alleges as follows:

20

21

**I. Introduction**

22

1. This suit stems from the unlawful misappropriation by Electronic Arts of National  
23 Collegiate Athletic Association ("NCAA") student-athlete likenesses. In the interest of generating  
24 increased sales of its NCAA football and basketball video games, Electronic Arts has disregarded  
25 the NCAA prohibition on use of its players' likenesses and names. In fact, Electronic Arts has  
26 made great efforts to ensure that it *does* use players' likenesses to enhance the reality of its  
27 software, and actively facilitates the addition of student-athlete names to the company's games at  
28

1 the click of a button. The NCAA and its licensing arm, the Collegiate Licensing Company  
2 ("CLC"), are complicit in this conduct in that they have ignored the NCAA's bylaws and instead  
3 sanctioned Electronic Arts's violations. The NCAA and the CLC have even investigated and  
4 approved Electronic Arts's use of student-athlete likenesses and names. The NCAA and CLC  
5 benefit from Electronic Arts's use of likenesses and names through the greater royalties paid to  
6 them as a result of increased game sales.  
7

8 2. This is a proposed class action on behalf of NCAA student-athletes whose  
9 likenesses have been used by Defendants without consent in violation of state law, in order to  
10 increase revenues and profits for the Defendants.

## 11 II. PARTIES

12 3. Plaintiff Bryon Bishop is a South Carolina resident and the former starting left  
13 guard for the University of North Carolina football team.  
14

15 4. Defendant Electronic Arts, Inc., a Delaware corporation, is an interactive  
16 entertainment software company that produces the NCAA Football, NCAA Basketball, and  
17 NCAA March Madness video game franchises. Electronic Arts describes itself as the "world's  
18 leading independent publisher and developer of video games" for numerous platforms, and in FY  
19 2008 the company recorded net revenues of \$3.67 billion. Electronic Arts's principal place of  
20 business is Redwood City, California.  
21

22 5. Defendant NCAA is an unincorporated voluntary association that governs United  
23 States college athletics. Through its expansive licensing operation, the NCAA generates hundreds  
24 of millions in royalties, broadcast rights, and other fees each year. The NCAA recorded fiscal  
25 year 2007-08 revenues of \$614 million. Almost 90% of the NCAA's annual budget revenues stem  
26 from marketing and television rights. NCAA is headquartered in Indianapolis, Indiana.  
27  
28



#### IV. DEFENDANTS' UNLAWFUL CONDUCT

1  
2 11. Electronic Arts produces the NCAA Football, NCAA Basketball, and NCAA  
3 March Madness video game franchises. Video game titles within these franchises simulate  
4 basketball and football games between NCAA member schools. Consumers demand that  
5 Electronic Arts simulate college sports contests in the most realistic manner possible, just as  
6 Electronic Arts simulates professional sports games with remarkable detail. A critical element of  
7 this simulation is the replication of player likenesses.  
8

9 12. In June 2004, CLC President Pat Battle appeared before the NCAA Subcommittee  
10 on Agents and Amaturism to advocate for reduced restrictions on video game licensing. Battle  
11 told the subcommittee: "A failure to keep up with technology and take full advantage from a  
12 consumer standpoint may make the NCAA [video game] title less valuable." In that vein,  
13 Electronic Arts spends millions of dollars each year to ensure the realism of its video games, and  
14 advertises this realism in the promotion of its products. Specifically, pursuant to a licensing  
15 agreement with CLC, Electronic Arts replicates team logos, uniforms, mascots, and even member  
16 school stadiums with almost photographic realism.  
17

18 13. As discussed below, Electronic Arts is not permitted to use player likenesses and  
19 names. In reality, however, Electronic Arts – with the knowledge, participation, and approval of  
20 the NCAA and CLC – extensively utilizes actual player likenesses and names. The three entities  
21 are well aware that the heightened realism in NCAA video games translates directly into increased  
22 sales of those games, and therefore increased revenues for Electronic Arts and increased royalties  
23 for CLC and NCAA.  
24

##### A. Prohibitions on Use of Likeness or Names

25  
26 14. NCAA Division I bylaws prohibit companies from profiting off of the use of  
27 NCAA student-athlete likenesses or names.  
28

1           15. Pursuant to Bylaw 12.5, "commercial items with names, likenesses or pictures of  
2 multiple student athletes" may be sold only at NCAA member institutions or their outlets.  
3 Furthermore, "[i]tems that include an individual student-athlete's name, picture or likeness . . .  
4 may not be sold[.]"

5  
6           16. Before being allowed to compete each year, all Division I NCAA athletes sign  
7 Form 08-3a, a contract agreeing that they have "read and understand" the NCAA's rules on  
8 prohibitions on the commercial use of their name, picture, or likeness and affirming that "to the  
9 best of [their] knowledge [they] have not violated any amateurism rules."

10           17. The NCAA has a duty to NCAA student-athletes to honor its own standards that  
11 prohibit the for-profit commercial use of amateur student-athlete likenesses. CLC is likewise  
12 obligated to honor NCAA prohibitions on the use of student likenesses. Upon information and  
13 belief, the licensing agreement between CLC and Electronic Arts prohibits use of student-athlete  
14 names and likenesses in video games. Moreover, the NCAA, through its licensing arm, must  
15 approve every Electronic Arts video game produced pursuant to the NCAA licensing agreement.  
16

17           **B. Electronic Arts's Misappropriation of Player Likenesses and Names**

18           18. Electronic Arts purports to honor the NCAA's regulations nominally prohibiting  
19 the use of player likenesses and names. However, the company's conduct makes clear that it pays  
20 lip service to NCAA regulations while blatantly incorporating player likenesses and names in the  
21 interest of selling video games. As an Electronic Arts spokesperson explained in an August 2005  
22 interview with *The Indianapolis Star*, the company's approach to the use of player likenesses and  
23 names is: "Ok, how far can we go?"  
24

25           19. In each of the NCAA sports games, Electronic Arts seeks to precisely replicate  
26 each school's entire team. With rare exception, virtually every real-life Division I football or  
27 basketball player in the NCAA has a corresponding player in Electronic Arts's games with the  
28

1 same jersey number, and virtually identical height, weight, build, and home state. In addition.  
2 Electronic Arts matches the player's skin tone, hair color, and sometimes hair style.

3 **i. Misappropriation of Plaintiff's Likeness**

4 20. Plaintiff Bryon Bishop had his name and likeness replicated in several games.

5 21. Plaintiff enrolled at the University of North Carolina in 2004. He did not play in  
6 his freshman season, instead taking a "redshirt" year and preserving four years of NCAA  
7 eligibility. He did not play in 2005 due to a back injury, and saw action in five football games as a  
8 sophomore in 2006.

9 22. In 2007, Plaintiff's junior year, he played in two football games at left guard, and in  
10 2008, as a redshirt senior, Plaintiff started in four games at left guard and played in nine games.

11 23. Plaintiff wore North Carolina jersey number 76. The player who wears number 76  
12 for North Carolina in NCAA Football 2008 and NCAA Football 2009 has the same height, weight,  
13 skin tone, hair color, hair style and home state as Bryon Bishop. North Carolina player "No. 76"  
14 is also the starting left guard for the Tar Heels in NCAA Football 2009, and his school year  
15 corresponds with Bishop's school year.  
16  
17

18 **ii. Misappropriation of Other Student-Athlete Likenesses**

19 24. The misappropriation of Plaintiff's likeness is part of Defendants' practice of  
20 misappropriating the likeness of nearly every NCAA Division I football and basketball player.

21 25. For example, Florida Gators Heisman Trophy-winning quarterback Tim Tebow  
22 wears number 15, stands 6'3" tall, weighs between 230 and 240 pounds, and is left-handed.  
23 Tebow, who hails from Florida, is Caucasian and plays with a band on his right wrist and forearm.  
24

25 26. In the Electronic Arts NCAA Football 2009 game, which simulates the NCAA  
26 football season that began in September 2008, Florida's starting quarterback wears number 15.  
27 stands 6'3" tall, weighs 232 pounds, throws left-handed, is Caucasian, wears a band over his right  
28

1 forearm, and hails from Florida. This depiction of Tim Tebow cannot be explained as mere  
2 coincidence.

3 27. Electronic Arts's blatant misappropriation of player likenesses is highlighted by a  
4 comparison of Electronic Arts's NCAA titles to its professional football and basketball titles – for  
5 which Electronic Arts has the legal right to player likenesses through license agreements.  
6

7 28. One would expect significant changes to virtual players' likenesses when those  
8 players graduate from an Electronic Arts NCAA sports title, where use of a player's likeness is  
9 prohibited, to a professional sports video game for which Electronic Arts has licensed that player's  
10 likeness. Yet, the virtual likenesses of newly professional athletes remain practically identical to  
11 the likenesses of those athletes utilized by Electronic Arts for its recent NCAA video games.  
12

13 29. Misappropriation of NCAA basketball players' likenesses is equally egregious. For  
14 example, in 2007 Duke point guard Greg Paulus was 6'1" tall and weighed 185 pounds. Paulus, a  
15 junior from New York, is Caucasian and played with a wristband on his left wrist.

16 30. The Electronic Arts NCAA March Madness 2008 game depicts the Duke point  
17 guard "No. 3" as a Caucasian from New York with measurements identical to those of Mr. Paulus  
18 and also sporting a left wristband.

19 31. North Carolina center Tyler Hansbrough, number 50 for the Tar Heels, hails from  
20 Missouri and was a 6'9"-tall, 245-pound junior in 2007. The March Madness 2008 game depicts  
21 the North Carolina center, "No. 50," with the same home state and physical characteristics.  
22

23 32. In addition to physical features, Electronic Arts even matches players' unique  
24 equipment preferences, including wristbands, headbands, and visors.

25 33. For example, Virginia Tech cornerback "No. 1" wears a visor in the NCAA  
26 Football 2009 game, just like Victor "Macho" Harris, the actual Virginia Tech cornerback who  
27  
28

1 wore number 1. Harris, a senior in 2008, stood 6'0" and weighed 192 pounds – identical to his EA  
2 Sports doppelganger.

3 34. Similarly, University of Texas quarterback "No. 12" wears a right elbow sweatband  
4 and wristbands on both wrists. The real Texas number 12, starting redshirt junior quarterback Colt  
5 McCoy, also wore a pair of wristbands and a right elbow sweatband, and measured 6'3" and 210  
6 for the 2008 season – again identical to his video game replication.  
7

8 35. These are not unique examples. Defendants deliberately and systematically  
9 misappropriate players' likenesses to increase revenues and royalties.

10 36. Where players have unique and identifiable playing behaviors, Electronic Arts  
11 attempts to match those as well.

12 37. Electronic Arts also matches the virtual player's home state to the player's actual  
13 home state, and in its football series often lists a city close to the player's real hometown as the  
14 virtual player's hometown.  
15

16 38. The only detail that Electronic Arts omits in its initial sale of the software is the  
17 real-life player's name on the jersey of his electronic equivalent. As one commentator observed,  
18 "the omission of players' names seems little more than a formality, done with a wink and a  
19 nudge."  
20

21 39. In fact, the initial omission of players' names is of little consequence because  
22 Electronic Arts has facilitated the simple upload of actual player names for all virtual players  
23 through its design of the games and related technology.

24 40. In the most recent versions of its games for the Sony PlayStation 3 and Microsoft  
25 Xbox 360, gamers can share rosters online using the company's proprietary "EA Locker" feature.  
26 The EA Locker feature allows gamers to upload rosters from other gamers while logged into the  
27 Electronic Arts game itself. Once rosters are uploaded, the default jerseys in the game that contain  
28



1 only player numbers are replaced with jerseys that contain both the player's actual name and  
2 number. Furthermore, in-game announcers then refer to players by their real names.

3 41. Alternatively, gamers have long been able to download rosters from a computer,  
4 upload the files to the gaming console, and then transfer the rosters to the appropriate video game.  
5 Numerous companies release data files that contain the complete rosters for each NCAA Division  
6 I school. These rosters can be placed on flash drive or memory card, and then easily uploaded.

7  
8 42. Electronic Arts could easily block users from uploading actual player names, as it  
9 does with names that contain profanities.

10 43. In addition to designing technology that ensures player names can be incorporated  
11 in a matter of seconds, Electronic Arts uses its website to promote the concept that virtual NCAA  
12 likenesses are, in fact, copies of the real players that wear the identical numbers. Through the  
13 Electronic Arts website, the company allows gamers to post video clips from the video games, and  
14 the clips are often labeled with actual player names even though they feature only Electronic  
15 Arts's computer generated simulations.  
16

#### 17 **V. INJURY TO CLASS MEMBERS AND PLAINTIFF**

18 44. Player names and likenesses and publicity rights are extremely valuable, intangible  
19 property. For example, it has been publicly reported that Electronic Arts pays the NFL Players  
20 Union nearly thirty-five million dollars each year for the use of players' names and likenesses.  
21

22 45. In clear violation of the NCAA's own rules, and despite contractual provisions  
23 prohibiting the use of player names and likenesses, the NCAA, CLC, and Electronic Arts have  
24 conspired to enable the use of player names and likenesses in Electronic Arts's video games for  
25 Defendants' own monetary gain and without any compensation to the individual athletes. In  
26 furtherance of the conspiracy, Electronic Arts produced these games by improperly using player  
27 likenesses with the knowledge and consent of the CLC and the NCAA. Specifically, despite their  
28

1 affirmative duties to prevent the use of player names and likenesses, and in furtherance of the  
2 conspiracy. the CLC and the NCAA have intentionally ignored Electronic Arts's blatant use of  
3 NCAA athlete names and likenesses and, in fact, have explicitly approved the utilization of NCAA  
4 athlete names and likenesses.

5  
6 **VI. COMMON COURSE OF CONDUCT EMANATING FROM CALIFORNIA AND INDIANA**

7 46. Electronic Arts is headquartered in Redwood City, California and is therefore a  
8 California resident and citizen. As a California resident and citizen, Electronic Arts is subject to  
9 California laws. Moreover, the executives responsible for negotiating the licensing agreements for  
10 NCAA games reside and work in California. Upon information and belief, the administration of  
11 licenses and negotiation of contracts with the NCAA and CLC have required frequent contact with  
12 Indiana by Electronic Arts, including but not limited to meetings at the NCAA's headquarters in  
13 Indiana.

14  
15 47. The NCAA has its principal place of business in Indiana and is therefore an Indiana  
16 resident and citizen. As an Indiana resident and citizen, the NCAA is subject to Indiana laws. The  
17 primary executives responsible for negotiating the licensing agreements for the NCAA games  
18 produced by Electronic Arts reside and work in Indiana. Approval to unlawfully utilize player  
19 likenesses was granted by NCAA executives located in Indiana. Upon information and belief, the  
20 administration of licenses and negotiation of contracts with the NCAA and CLC has required  
21 frequent contact with California, including but not limited to meetings at Electronic Arts's  
22 headquarters in California regarding player likenesses and frequent reaching out to individuals in  
23 the state via interstate wires and the internet.

24  
25 48. CLC has its principal headquarters in Atlanta, Georgia. Upon information and  
26 belief, its contracts with the NCAA were negotiated in Indiana, and the administration of the  
27 contracts required frequent contact and travel to Indiana. CLC's contracts with Electronic Arts  
28

1 were negotiated, in whole or in part, with executives located in California. The administration of  
2 the contracts, including the provisions regarding player likenesses, requires frequent contact with  
3 California. In negotiating and executing the player likeness provisions of the license with  
4 Electronic Arts, CLC was directed by the NCAA and executives of the NCAA in Indiana.

5 49. Defendants' unlawful conspiracy took place in California and Indiana.  
6 Specifically, the unlawful course of conduct was directed and ratified by Defendants in both  
7 California and Indiana.  
8

### 9 VII. CLASS ACTION ALLEGATIONS

10 50. Plaintiff sues on his own behalf and on behalf of a class of persons pursuant to  
11 Federal Rule of Civil Procedure 23. The putative Class is defined as:

12 All NCAA football and basketball players listed on the official opening day roster  
13 of a school whose team was included in any interactive software produced by  
14 Electronic Arts, and whose assigned jersey number appears on a virtual player in  
the software.

15 51. Excluded from the class are Defendants, their employees, co-conspirators, officers,  
16 directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or  
17 affiliated companies, class counsel and their employees, and the judicial officers, and associated  
18 court staff assigned to this case.

19 52. The persons in the Class are so numerous that individual joinder of all members is  
20 impracticable under the circumstances of this case. Although the precise number of such persons  
21 is unknown, the exact size of the Class is easily ascertainable, as each class member can be  
22 identified by using the Defendants' records. Plaintiff is informed and believes that there are many  
23 thousands of Class members.  
24

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

27 (a) Whether Electronic Arts utilizes NCAA player likenesses in its video games;  
28

- 1 (b) Whether such use is unlawful;
- 2 (c) Whether the NCAA's duty of good faith and fair dealing requires it to protect
- 3 players' likeness rights when dealing with Electronic Arts;
- 4 (d) Whether the NCAA and the CLC have conspired with Electronic Arts to illegally
- 5 use players' likenesses;
- 6 (e) Whether Defendants have authorized, approved, or permitted Electronic Arts's use
- 7 of NCAA player likenesses in its video games;
- 8 (f) Whether NCAA's conduct violates Indiana Code § 32-36-1-1;
- 9 (g) Whether Electronic Arts's conduct violates California Civil Code § 3344;
- 10 (h) Whether Electronic Arts's conduct violates California common law rights of
- 11 publicity;
- 12 (i) Whether Electronic Arts's conduct constitutes an unfair trade practice;
- 13 (j) Whether class members have been damaged by Defendants' conduct and the
- 14 amount of such damages;
- 15 (k) Whether punitive damages are appropriate and the amount of such damages;
- 16 (l) Whether statutory damages are appropriate and the amount of such damages; and
- 17 (m) Whether Defendants should disgorge their unlawful profits and the amount of such
- 18 profits.

19 54. Plaintiff's claims are typical of the Class's claims, as they arise out of the same  
20 course of conduct and the same legal theories as the rest of the Class, and Plaintiff challenges the  
21 practices and course of conduct engaged in by Defendant with respect to the Class as a whole.

22 55. Plaintiff will fairly and adequately protect the interests of the Class. He will  
23 vigorously pursue the claims and has no antagonistic conflicts. Plaintiff has retained counsel who  
24 are able and experienced class action litigators and are familiar with the video game industry.

25 56. Defendants have acted or refused to act on grounds that apply generally to the Class  
26 and final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as  
27 a whole. A class action is also appropriate because Defendants have acted and refused to take  
28

1 steps that are, upon information and belief, generally applicable to thousands of individuals,  
2 thereby making injunctive relief appropriate with respect to the Class as a whole.

3 57. Questions of law or fact common to class members predominate over any questions  
4 affecting only individual members. Resolution of this action on a class-wide basis is superior to  
5 other available methods and is a fair and efficient adjudication of the controversy because in the  
6 context of this litigation, no individual class member can justify the commitment of the large  
7 financial resources to vigorously prosecute a lawsuit against Defendants. Separate actions by  
8 individual class members would also create a risk of inconsistent or varying judgments, which  
9 could establish incompatible standards of conduct for Defendant and substantially impede or  
10 impair the ability of class members to pursue their claims. It is not anticipated that there would be  
11 difficulties in managing this case as a class action.  
12

## 13 VIII. CAUSES OF ACTION

### 14 FIRST CAUSE OF ACTION

#### 15 (Deprivation on Rights of Publicity, Violation of Indiana Code § 32-36-1-1) 16 (As Against NCAA)

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

19 59. Plaintiff's and class members' names, voices, signatures, photographs, images,  
20 likenesses, distinctive appearances, gestures, and mannerisms have commercial value. Pursuant to  
21 and in furtherance of its unlawful conspiracy with the NCAA and the CLC, Electronic Arts has  
22 used and continues to use Plaintiff's and class members' names, images, likenesses, and  
23 distinctive appearances without their consent in connection with and for the purposes of  
24 advertising, selling, and soliciting purchases of its video games, including its NCAA Football,  
25 NCAA Basketball, and NCAA March Madness franchises.  
26  
27  
28









1           79.     In furtherance of the unlawful conspiracy alleged above and with the knowledge  
2 and consent of the CLC and Electronic Arts, the NCAA breached its contracts with class members  
3 by, among other things: (1) seeking to accomplish indirectly through its relationship and  
4 agreements with Defendant Electronic Arts that which it could not do directly (profit from class  
5 members' likenesses); (2) failing to insure and protect class members' rights when it established  
6 contractual relationships with the other Defendants; (3) permitting the other Defendants to use  
7 Plaintiff's and class members' likenesses – such as when it expressly permitted Electronic Arts to  
8 utilize players' names and likenesses; (4) purposely ignoring that the other Defendants were using  
9 class members' likenesses, despite the fact that class members only gave Defendant NCAA  
10 limited publicity rights for NCAA events; and (5) not abiding by the terms of its own contracts.

11  
12           80.     As a proximate result of Defendants' conduct, Plaintiff and class members have  
13 been injured.  
14

15                                   **SEVENTH CAUSE OF ACTION**  
16                                   **(Unjust Enrichment)**  
17                                   **(As Against Electronic Arts and CLC)**

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

20           82.     To the detriment of Plaintiff and class members, Defendants Electronic Arts and  
21 CLC have been and continue to be unjustly enriched as a result of the unlawful and/or wrongful  
22 conduct alleged herein. Electronic Arts and CLC have been unjustly benefited through the sale of  
23 video games that utilize the names and likenesses of Plaintiff and class members.

24           83.     Between Defendants Electronic Arts/CLC and Plaintiff/class members, it would be  
25 unjust for Electronic Arts and CLC to retain the benefits attained by their wrongful actions.  
26 Accordingly, Plaintiff and class members seek full restitution of Electronic Arts's and CLC's  
27  
28

1 enrichment, benefits, and ill-gotten gains, acquired as a result of the unlawful and/or wrongful  
2 conduct alleged herein.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

6 A. Certification of the action as a Class Action pursuant to the Federal Rules of Civil  
7 Procedure, and appointment of Plaintiff as the Class Representative and his counsel of record as  
8 Class Counsel;

9 B. A declaration by this Court that Defendants' conduct constituted a conspiracy, and  
10 that they are jointly and severally liable for the conduct of or damage inflicted by any other  
11 defendant;

12 C. Actual damages, statutory damages, punitive damages, and such other relief as  
13 provided by the statutes cited herein;

14 D. Disgorgement of all profits earned by Defendants from the sale of video games  
15 containing the likenesses of Plaintiff and class members;

16 E. Prejudgment and post-judgment interest on such monetary relief;

17 F. Equitable relief enjoining future use of the names or likenesses of Plaintiff and  
18 class members in video games, and declaring null, void, and/or unenforceable any contractual  
19 provisions or NCAA rules purporting to limit the right of Plaintiff and class members to receive  
20 compensation for their injuries;

21 G. Seizure and destruction of all copies of any video games in possession, custody or  
22 control of Defendants or third parties (to the extent permitted by law) that infringe upon Plaintiff's  
23 and class members' rights of publicity;

24 H. The costs of bringing this suit, including reasonable attorneys' fees: and  
25  
26  
27  
28

1 I. All other relief to which Plaintiff and class members may be entitled at law or in  
2 equity.

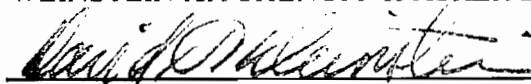
3 IX. JURY TRIAL DEMANDED

4 84. Plaintiff demands a trial by jury on all issues triable of right by jury.

7 Respectfully submitted.

8 Dated: September 4, 2009

WEINSTEIN KITCHENOFF & ASHER LLC

9   
10 David H. Weinstein

11 David H. Weinstein (SBN 43167)  
12 Steven A. Asher  
13 Mindee J. Reuben  
14 Jeremy S. Spiegel  
15 WEINSTEIN KITCHENOFF & ASHER LLC  
16 1845 Walnut Street, Suite 1100  
17 Philadelphia, Pennsylvania 19103  
18 Telephone: (215) 545-7200  
19 Facsimile: (215) 545-6535  
20 Email: weinstein@wka-law.com

16 Joseph C. Kohn  
17 Robert J. LaRocca  
18 KOHN SWIFT & GRAF, P.C.  
19 One South Broad Street, Suite 2100  
20 Philadelphia, Pennsylvania 19107  
21 Phone: (215) 238-1700  
22 Fax: (215) 238-1968  
23 Email: jkohn@kohswift.com

16 Roberta D. Liebenberg  
17 Donald L. Perelman  
18 FINE, KAPLAN AND BLACK, R.P.C.  
19 1835 Market Street, Suite 2800  
20 Philadelphia, Pennsylvania 19103  
21 Phone: (215) 567-6565  
22 Fax: (215) 568-5872  
23 Email: rliebenberg@finekaplan.com

21 Gerald J. Rodos  
22 Jeffrey B. Gittleman  
23 BARRACK RODOS & BACINE  
24 3300 Two Commerce Square  
25 2001 Market Street  
26 Philadelphia, Pennsylvania 19130  
27 Phone: (215) 963-0600  
28 Fax: (215) 963-0838  
Email: grodos@barrack.com

21 Howard J. Sedran  
22 Austin B. Cohen  
23 LEVIN, FISHBEIN, SEDRAN & BERMAN  
24 510 Walnut Street, Suite 500  
25 Philadelphia, Pennsylvania 19106  
26 Phone: (215) 592-1500  
27 Fax: (215) 592-4663  
28 Email: hsedran@lfsblaw.com

Attorneys for Plaintiff