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DRS

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

16 Brandon Gardner, an individual, on
17 behalf of himself and all others
similarly situated,

18 Plaintiff,

19 v.

20 Electronic Arts, Inc., a Delaware
corporation, and DOES 1-75

21 Defendants.

CASE No.

C08 04629

RS

COMPLAINT

JURY DEMAND

BY FAX

CLASS ACTION COMPLAINT

1
2 Plaintiff Brandon Gardner (“Plaintiff”), by his attorneys, states this
3
4 complaint against Defendant ELECTRONIC ARTS, INC. (“Electronic Arts” or
5 “EA”). Plaintiff’s allegations are based on information and belief, except to his
6
7 own actions, which are based on knowledge. Plaintiff’s allegations on information
8
9 and belief are based on the investigation of his counsel, and facts that are a matter
10
11 of public record.

NATURE OF THE CLAIM

12 1. This is a class action concerning the *Mass Effect* computer game
13 (“Mass Effect”) published by Electronic Arts. Mass Effect is advertised and sold
14
15 as a game for the PC. When consumers make their purchase of Mass Effect, they
16
17 are told:

- 18 ■ Experience a rich and engrossing story where your choices decide the
19 fate of galaxy
- 20 ■ Engage in emotionally charged interactions with the most realistic
21 digital actors ever seen in a video game, using an innovative new
22 dialog system
- 23 ■ Immerse yourself in an incredible new adventure from world-famous
24 masters of the RPG; BioWare
- 25 ■ Stunning high resolution graphics, optimized GUI and controls for PC
26 gamers
- 27 ■ Dominate the battlefield with new individual squad member command
28 system

Purchasers are invited to install and use the game on their computers.

2. What purchasers are *not* told is that, included in the purchase,

1 installation, and operation of Mass Effect is a second, undisclosed program. The
2 name of the second program is SecuROM, which is a form of Digital Rights
3 Management (DRM) for computer games. Although consumers *are* told that the
4 game uses access control and copy protection technology, consumers are not told
5 that this technology is actually an entirely separate, stand-alone program which
6 will download, install, and operate on their computers, along with the Mass Effect
7 download. Consumers are given no control, rights, or options over SecuROM.
8 The program cannot be completely uninstalled. Once installed, it becomes a
9 permanent part of the consumer's software portfolio. Even if the consumer
10 uninstalls the Mass Effect game, and entirely deletes it from their computer,
11 SecuROM remains installed and operating on their computer. The only way to
12 completely remove SecuROM, and all aspects of its original secret installation, is
13 through a complete wipe of the hard drive through reformatting or replacement of
14 the drive.

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20
21 3. This action is brought on behalf of a class of all consumers globally
22 who have purchased the Mass Effect computer game. Electronic Arts'
23 intentionally did not disclose to any such purchasers that the Mass Effect game
24 disk also possessed a second, hidden program which secretly installed to the
25 command and control center of the computer (Ring 0, or the Kernel), and
26 surreptitiously operated, overseeing function and operation on the computer,
27
28

1 preventing the computer from operating under certain circumstances and/or
2 disrupting hardware operations. These actions constitute violations of the
3
4 California Consumer Legal Remedies Act, Civil Codes § 1750 et seq. and
5 California's Unfair Competition Law, Business & Professions Code §§ 17200, et
6
7 seq., and further constitute a trespass to chattels. In addition the use and
8
9 implementation of the SecuROM program violates purchasers' rights under the
10
11 Copyright Act (First Sale Doctrine) to freely and without restriction sell, transfer,
12
13 or otherwise convey their copyrighted copy of the Mass Effect game to others.

12 **INTRODUCTORY ALLEGATIONS**

13
14 4. This consumer class action arises from defendant Electronic Arts
15
16 Inc.'s ("Electronic Arts" or "EA" or "defendant"), engaging in deceptive and
17
18 unlawful conduct in designing, marketing, distributing, and selling a computer
19
20 game disk that contains undisclosed and unconsented to Digital Rights
21
22 Management (DRM) technology.

23 5. Electronic Arts, Inc. (NASDAQ: ERTS) is a worldwide American
24
25 developer, marketer, publisher, and distributor of computer and computer games.
26
27 Established in 1982, the company was a pioneer of the early home computer games
28
29 industry. Originally, EA was a home computing game publisher. In the late
30
31 1980s, the company began developing games in-house and supported consoles by
32
33 the early 1990s. EA later grew via acquisition of several successful developers.

1 By the early 2000s, EA had become one of the world's largest third-party
2 publishers. In 2007 EA ranked 8th on the list of largest software companies in the
3 world. In May 2008, the company reported net annual revenue of US\$ 4.02 billion
4 in fiscal year 2008.
5

6 **The Mass Effect Computer Game**

7
8 6. The full version of the Mass Effect Computer game was released on
9 or about May 28, 2008 in North America. The game was released June 5, 2008 in
10 Europe. Mass Effect is also available for direct download from Electronic Arts.
11

12 7. **Mass Effect** is an action role-playing game developed by BioWare for
13 Xbox 360 and the PC. The game takes place in the year 2183, with the player
14 assuming the role of an elite human soldier named Commander Shepard, set out to
15 explore the Galaxy on a starship, the *SSV Normandy*.
16

17
18 8. Mass Effect was well received and highly rated by game review blogs
19 and journals. It received numerous awards and high scores, even earning the
20 accolade of "game of the year" from many gaming websites.
21

22 **SecuROM Digital Rights Management (DRM) Technology**

23 9. The Mass Effect game must be installed from the gamedisk (cd) or
24 downloaded from EA's website onto a computer in order for the game to function.
25

26 10. When a user installs the Mass Effect game, a second program,
27 SecuROM, is automatically and secretly installed along with the Mass Effect
28

1 game.

2 11. SecuROM installs itself to the Kernel of the computer (the
3 administrative command and control center of the computer). Once installed,
4 SecuROM then allows itself to access to all parts of the computer.
5

6 12. The operating system of a computer utilizes different parts or levels of
7 the computer, determined by the need of the software for access and control over
8 different aspects of the hardware or software. These parts are commonly called
9 Ring 0, 1, 2 and 3. Ring 0 is sometimes referred to as the Kernel. The Kernel is
10 usually used by the Operating System to run the computer and it has access to
11 everything on the computer. Ring 3, which is the normal zone used by Software
12 has much lower permissions. SecuROM represents that it installs itself to Ring 3
13 (by having a part of itself called the UA7service.exe written to Ring 3), when in
14 fact it installs its primarily operational code to Ring 0.
15
16
17
18

19 13. Writing itself to the Kernel of the computer allows SecuROM to have
20 control over all other programs and processes on the computer, including
21 equipment that computer users are legally permitted and entitled to possess (e.g.,
22 two cd/dvd drives on the computer).
23
24

25 14. Like any program, SecuROM uses computer resources. It uses
26 memory, processor cycles, and program handles (leaving less for any uses the
27 owner might have had planned for their computer). To transmit information back
28

1 to EA, SecuROM uses the computer owner's internet connection. Whenever it
2 downloads, installs, or runs, SecuROM uses resources belonging to the computer
3 owner, which, by definition, make those resources unavailable for other tasks.
4 Like any program, SecuROM takes up space on the user's hard drive. Like any
5 program, SecuROM offers computer users another opportunity for something to go
6 wrong, if it fails. And, just like any other program, SecuROM does have its
7 failures.¹

8
9
10
11 15. No notification of the nature, function, and operation of the SecuROM
12 program was provided to Mass Effect purchasers. No notice of its secret
13 installation was provided to persons who loaded and installed the Mass Effect
14 computer game. No one was told that it was a separate program installing to the
15 Kernel of the computer and that it could not be uninstalled.

16
17
18 16. At EA's online store, the website describes the games features:

- 19
20
- 21 • Experience a rich and engrossing story where your choices decide the
22 fate of a galaxy
 - 23 • Engage in emotionally charged interactions with the most realistic
24 digital actors ever seen in a video game, using an innovative new
25 dialog system

26
27
28

¹ See. E.g.: <http://forums.guru3d.com/showthread.php?p=270437>

A version of SecuROM installed with many recent games is responsible for crashing games possibly in all versions of windows and also the explorer right click context crash on Vista (also affects ME). The file responsible for crash is CMDLineExt.dll which can be found in System 32. CMDLineExt.dll is for a right click context menu used for starting SecuROM analysis for game executables.

- 1 • Immerse yourself in an incredible new adventure from world-famous
- 2 masters of the RPG, BioWare
- 3 • Stunning high resolution graphics for PC
- 4 • Optimized GUI and controls for PC gamers
- 5 • Dominate the battlefield with new individual squad member command
- 6 system

7 Further, the website lists the system requirements for Mass Effect:

8 Internet Connection - Required

9 OS - Windows XP/Vista (FAT 16/32 File Systems not supported for

10 Digital Download)

11 Processor – Single Core: 2.4 GHz or faster / Multiple Cores: 2.0 GHz or

12 faster

13 Memory – XP: 1.0 GB RAM / Vista: 2.0 GB RAM

14 Hard Drive – 15 GB (30 GB for Digital Download)

15 DVD Drive – 1 SPEED (Not required for Digital Download)

16 Video Card – 256 MB with Pixel Shader 3.0 support*

17 Sound Card - DirectX 9.0c compatible

18 DirectX - Version 9.0c October 2006 (included on disc)

19 Input - Keyboard, Mouse

20 *Supported chipsets: NVIDIA GeForce 6800 GT or greater; ATI Radeon

21 X1300 XT or greater. Laptop versions of these chipsets may work but are

22 not supported. Updates to your video and sound card drivers may be

23 required.

24 17. Nowhere in any of EA's websites descriptions of its Mass Effect

25 game, or in its advertisements or promotions of the game, did EA disclose that the

26 Mass Effect game contained a separately installed, stand alone, unremovable DRM

27 program which would install itself to the command and control center of the

28 computer and oversee function and operation on the computer, preventing certain

user actions, preventing certain user programs from operating, or disrupting

hardware operations.

1 18. EA's EULA for Mass Effect states:

2 Technical Protection Measures. Our Software uses access
3 control and copy protection technology. An internet connection
4 is required to authenticate the Software and verify your license.
5 You must periodically connect to the Internet to authenticate
6 the Software and refresh your license. If your license needs to
7 be refreshed and you are not connected to the Internet, you will
8 not be able to use the Software until you reestablish an internet
9 connection and refresh the license. The first end user of this
10 License can install and authenticate the Software on a set
11 number of machines which may vary by product. If the
12 Software permits access to additional online features, only one
13 copy of the Software may access those features at one time.
14 Additional terms and registration may be required to access
15 online services. If you disable or otherwise tamper with the
16 technical protection measures, the Software will not function
17 properly.

18 19. EA's representations about its Mass Effect DRM talk in terms of
19 "internet connection" and "online services" – as if all "Technological Protection
20 Measures" were entirely online-based and resident at EA's website, instead of
21 being program-based at the operating system level of the user's own computer.
22 These statements by EA constitute significant misrepresentations of EA's DRM
23 regime given the fact that the actual process involves a separate DRM program
24 permanently installed onto the hard drive of the user's computer at the Kernel.

25 20. By forcing a secret installation of SecuROM to the Ring 0 of the
26 computer systems of plaintiff and the class, EA took for itself administrative rights
27 higher than the actual owner of the computer, without informing the computer
28

1 owner of its intention to acquire such computer privileges, and without obtaining
2 consent from the owner of the computer in its acquisition of those computer
3
4 privileges.

5 21. By forcing a secret installation of SecuROM to the Ring 0 of the
6 computer systems of plaintiff and the class, EA has rendered every single computer
7 on which its SecuROM program is installed vulnerable to malicious attack.
8 Because of the way the SecuROM program is written and installed, there exist
9 simple exploits that can permit hackers and criminals to gain access or control of
10 any user's system on which SecuROM is installed. EA installed SecuROM
11 directly to the computer's Kernel. SecuROM is a vulnerable, ill-protected program
12 operating at the highest level of security on the computer. Every single computer
13 owner that has SecuROM installed on their computer is vulnerable to a third party
14 direct attack on that user's OS Kernel, permitting the complete control of every
15 aspect of that computer system by outside third parties. Simply by virtue of having
16 the program installed on their computers, EA's SecuROM program has opened a
17 major security hole directly into the most sensitive, and ordinarily, most highly
18 protected systems on a computer.
19
20
21
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25 22. In addition, and also undisclosed to purchasers of the Mass Effect
26 computer game, the SecuROM program is designed to directly interfere with,
27 and/or disable certain software functions. Specifically, SecuROM will disable
28

1 certain programs that the designers of the SecuROM program believe that
2 computer users should not own, or possess, or operate on their computer, to wit:

- 3
- 4 ▪ Fantom CD Emulator
- 5 ▪ Alcohol 120%
- 6 ▪ Nero Image Drive
- 7 ▪ Phantom CD
- 8 ▪ Clone CD
- 9 ▪ Ark Virtual Drive
- 10 ▪ Veritas DLA
- 11 ▪ Daemon Tools
- 12 ▪ AnyDVD
- 13 ▪ Process Explorer

14 23. Process Explorer is a commonly used system monitoring and
15 examination utility published by Microsoft which is used as the first step in
16 debugging software or system problems. Nevertheless, EA, by virtue of its secret
17 installation of SecuROM, has determined that it should have control over which
18 programs a user may run or utilize on their computer, and so it designed SecuROM
19 to prohibit the operation of this program, and others, if Mass Effect is open.

20 24. In addition, and also undisclosed to purchasers of the Mass Effect
21 computer game, the SecuROM program is designed to directly interfere with,
22 and/or disable hardware functions. Specifically, SecuROM will disable multiple
23 cd / dvd burners on computers. This disabling occurs regardless of whether the
24 Mass Effect game is running or not. In other words, SecuROM will seek out and
25 disable any secondary disk burning hardware on any computer on which it is
26
27
28

1 installed. EA, by virtue of its secret installation of SecuROM, has determined that
2 it should have control over what hardware a user may have installed on their
3 computer, and so it designed SecuROM to prohibit the operation of certain
4 hardware regardless is Mass Effect is open or not.
5

6
7 25. Plaintiff brings this class action on behalf of a global class of
8 consumers who purchased Electronic Arts' Mass Effect computer game which
9 contained an undisclosed, secret, separately installed, stand alone, unremovable
10 DRM program which would install itself to the command and control center of the
11 computer and oversee function and operation on the computer, preventing certain
12 user actions, preventing certain user programs from operating, or disrupting
13 hardware operations. Plaintiff and the proposed class members would not have
14 purchased the Mass Effect computer game and/or paid as much for it had they
15 known the truth about the product.
16
17
18

19 26. Plaintiff seeks actual damages, individual restitution, equitable relief,
20 civil penalties, costs and expenses of litigation, including attorneys' fees, and all
21 further relief available.
22

23 **VENUE AND JURISDICTION**

24
25 27. This Court has subject matter jurisdiction over this action pursuant to
26 28 U.S.C. § 1332. The aggregate claims of plaintiff and the proposed class
27 members exceed, for all jurisdictional purposes, the sum or value of \$5,000,000.00.
28

1 28. Electronic Arts is a Delaware corporation headquartered in California
2 and is a citizen only of the states of California and Delaware. Plaintiff is a citizen
3 and resident of Florida, and asserts claims of behalf of a proposed class whose
4 members are scattered throughout the world, and throughout the fifty states
5 (including the 48 states besides California and Delaware) and the U.S. territories:
6 there is minimal diversity of citizenship between proposed class members and the
7 Defendant.
8

9
10 29. This Court also has personal jurisdiction over defendant because (a) a
11 substantial portion of the wrongdoing alleged in this complaint took place in this
12 state, (b) defendant Electronic Arts' principal place of business is located in this
13 state, and (c) defendant is authorized to do business here, has sufficient minimum
14 contacts with this state, and/or otherwise intentionally availed itself of the markets
15 in this state through the promotion, marketing, and sale of its product in this state,
16 to render the exercise of jurisdiction by this Court permissible under traditional
17 notions of fair play and substantial justice.
18
19
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21

22 30. Venue is proper in this District under 28 U.S.C. §1391(b) and (c). A
23 substantial portion of the events and conduct giving rise to the violations of law
24 complained of herein occurred in this District, defendant Electronic Arts Inc.'s
25 principal executive offices and headquarters are located in this District at 209
26 Redwood Shores Parkway, Redwood City, CA 94065, and defendant conducts
27
28

1 business with consumers in this District.

2 31. Jurisdiction and venue are also proper in this district because the EA
3
4 End User License Agreement (“EULA”) contains a clause entitled “Governing
5 Law” which expressly vests jurisdiction and venue for actions related to the Mass
6 Effect computer game and its EULA in the state and federal courts of California
7
8 and this district:

9
10 Unless expressly waived by EA in writing for the particular
11 instance or contrary to local law, the sole and exclusive jurisdiction
12 and venue for actions related to the subject matter hereof shall be the
13 California state and federal courts having within their jurisdiction the
14 location of EA's principal corporate place of business. Both parties
15 consent to the jurisdiction of such courts and agree that process may
16 be served in the manner provided herein for giving of notices or
17 otherwise as allowed by California or federal law.

18 **PARTIES**

19 32. Plaintiff Brandon Gardner (Plaintiff) is a citizen and resident of
20 Calhoun County, Florida. Plaintiff purchased a copy of the Mass Effect computer
21 game. EA did not disclose that the Mass Effect computer game contained an
22 undisclosed, secret, separately installed, stand alone, unremovable DRM program
23 which would install itself to the command and control center of the computer and
24 oversee function and operation on the computer, preventing certain user actions,
25 preventing certain user programs from operating, or disrupting hardware
26 operations. Plaintiff would not have purchased the computer game and/or paid as
27
28

1 much for the computer game had he known the truth about the product. Plaintiff
2 brings this action on behalf of himself and all others similarly situated.
3

4 33. Defendant Electronic Arts has been and still is engaged in the
5 business of designing, creating, marketing, distributing, and/or selling computer
6 games. Defendant Electronic Arts is a Delaware Corporation with its principal
7 offices at 209 Redwood Shores Parkway, Redwood City, CA 94065. Electronic
8 Arts common shares trade on the NASDAQ (ERTS).
9

10
11 34. Plaintiff is currently ignorant of the true names and capacities,
12 whether individual, corporate, associate, or otherwise, of the defendants sued
13 herein under the fictitious names Does 1 through 75, inclusive, and therefore, sues
14 such defendants by such fictitious names. Plaintiff will seek leave to amend this
15 complaint to allege the true names and capacities of said fictitiously named
16 defendants when their true names and capacities have been ascertained. Plaintiff is
17 informed and believes and based thereon allege that each of the fictitiously named
18 Doe defendants is legally responsible in some manner for the events and
19 occurrences alleged herein, and for the damages suffered by plaintiff.
20
21

22
23 35. Plaintiff is informed and believes and based thereon allege that all
24 defendants, including the fictitious Doe defendants, were at all relevant times
25 acting as actual agents, conspirators, ostensible agents, partners and/or joint
26 venturers and employees of all other defendants, and that all acts alleged herein
27
28

1 occurred within the course and scope of said agency, employment, partnership, and
2 joint venture, conspiracy or enterprise, and with the express and/or implied
3 permission, knowledge, consent, authorization and ratification of their co-
4 defendants; however, each of these allegations are deemed “alternative” theories
5 whenever not doing so would result in a contraction with the other allegations.
6
7

8 **CLASS ALLEGATIONS**

9 36. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3) of the
10 Federal Rules of Civil Procedure, on behalf of himself and a class defined as
11 follows:
12

13 All persons or entities globally who purchased as an end-user a Mass
14 Effect computer game.
15

16 Excluded from the class is defendant, any entity in which
17 defendant has a controlling interest or which has a controlling interest
18 in defendant, and defendant’s legal representatives, predecessors,
19 successors, assigns, and employees. Also excluded from the class are
20 the judge and staff to whom this case is assigned, and any member of
21 the judge’s immediate family.
22
23

24 37. Plaintiff reserves the right to revise this definition of the class based
25 on facts he learns during discovery.
26

27 38. The EA End User License Agreement (“EULA”) contains a clause
28

1 entitled "Governing Law" as follows:

2 **13. Governing Law.** This License shall be governed by and
3 construed (without regard to conflicts or choice of law principles)
4 under the laws of the State of California as applied to agreements
5 entered into and to be performed entirely in California between
6 California residents. Unless expressly waived by EA in writing for the
7 particular instance or contrary to local law, the sole and exclusive
8 jurisdiction and venue for actions related to the subject matter hereof
9 shall be the California state and federal courts having within their
10 jurisdiction the location of EA's principal corporate place of business.
11 Both parties consent to the jurisdiction of such courts and agree that
12 process may be served in the manner provided herein for giving of
13 notices or otherwise as allowed by California or federal law. The
14 parties agree that the UN Convention on Contracts for the
15 International Sale of Goods (Vienna, 1980) shall not apply to this
16 License or to any dispute or transaction arising out of this License.

17 39. The above Governing Law provision vests jurisdiction in the
18 California state and federal courts in the district of the location of EA's principal
19 corporate place of business (Redwood City, CA). Thus, mandatory jurisdiction in
20 this U.S. District Court vests for any purchaser of the Mass Effect game, wherever
21 purchased, either within or outside of the United States, by virtue of the express
22 EA EULA terms. The above Governing Law provision also requires the
23 application of the laws of the State of California to be applied to any purchase or
24 use of the game anywhere, as if the game were purchased entirely in California and
25 used by California residents. Thus, citizens and residents of all states, and citizens
26 and residents of all countries other than the United States are, for all purposes
27 related to this instant Complaint, similarly situated with respect to their rights and
28

1 claims as California residents, and therefore are appropriately included as members
2 of the Class, regardless of their residence or place of purchase of the Mass Effect
3 computer game.
4

5 40. Plaintiff is a member of the class that he seeks to represent. Members
6 of the class can be identified using records of retail sales and/or other information
7 that is kept by defendant in the usual course of business and/or in the control of
8 defendant. Class members can also be notified of the class action through
9 publication and direct mailings to address lists maintained in the usual course of
10 business by defendant.
11
12

13 41. **Numerosity**: Class members are so numerous that their individual
14 joinder is impracticable. It is estimated that the Class consists of tens of thousands
15 of members. The precise number of class members is unknown to plaintiff, but it
16 is clear that the number greatly exceeds the number to make joinder impossible.
17
18

19 42. **Existence and predominance of common questions**: Common
20 questions of law and fact predominate over the questions affecting only individual
21 class members. Some of the common legal and factual questions include:
22

- 23 a. Whether EA fails to disclose the presence of an additional
24 program on the Mass Effect gamedisk;
25
26 b. Whether EA should have separately disclosed the presence of
27 an additional DRM program on the Mass Effect gamedisk, and the
28

1 extent and nature of that program;

2 c. Whether defendant should have disclosed, and is liable for its
3 failure to disclose the SecuROM program, the precise details and
4 nature of the program, where and how it would install, and how it
5 would operate, prior to any purchase of the program;
6

7
8 d. Whether defendant should have disclosed, and is liable for its
9 failure to disclose, the SecuROM program, the precise details and
10 nature of the program, where and how it would install, and how it
11 would operate, prior to any installation of the program;
12

13 e. Whether defendant should have obtained informed consent
14 from the user, prior to the installation of the SecuROM program;
15

16 f. Whether defendant concealed crucial details concerning the
17 presence operation, function, and unremovability of the SecuROM
18 DRM program to the class and the public;
19

20 g. Whether defendant's actions in concealing crucial details
21 concerning the presence, operation, function, and unremovability of
22 the SecuROM DRM program were likely to deceive the public;
23

24 h. Whether defendant made representations that the Mass Effect
25 computer game was of a particular standard or quality, which it did
26 not have;
27
28

1 i. Whether defendant made representations that the Mass Effect
2 computer game had characteristics, uses, benefits, or qualities which it
3 did not have;

4
5 j. Whether, by its conduct, defendant has engaged in unfair or
6 unlawful business practices with respect to the advertising, marketing,
7 and sale of the Mass Effect computer game;

8
9 k. Whether, by its conduct, defendant has engaged in unfair,
10 deceptive, untrue, or misleading advertising of the Mass Effect
11 computer game;

12
13 l. Whether defendant violated consumer protection statutes and/or
14 state deceptive business practices statutes;

15
16 m. Whether, by its conduct, defendant has trespassed on the
17 computers of all persons who installed the Mass Effect computer
18 game;

19
20 n. Whether defendant's use of the SecuROM program unlawfully
21 interferes with purchasers' rights to sell, transfer, or otherwise convey
22 to another their lawful copy of the Mass Effect game under the First
23 Sale doctrine;

24
25 o. Whether California law applies to all claims and claimants in
26 this action; and
27
28

1 p. The nature and extent of damages and other remedies to which
2 the conduct of defendant entitles the class members.
3

4 43. Defendant engaged in a common course of conduct giving rise to the
5 legal rights sought to be enforced by the class members. Similar or identical
6 statutory and common law violations, deceptive business practices, and omissions
7 regarding the product are involved. Individual questions, if any, pale by
8 comparison to the numerous common questions that predominate.
9
10

11 44. The injuries sustained by the class members flow, in each instance,
12 from a common nucleus of operative facts. In each case, defendant designed,
13 created, supplied, distributed, marketed, and/or sold the Mass Effect computer
14 game containing the second, undisclosed computer program.
15

16 45. Class members have been damaged by defendant's misconduct. Class
17 members have purchased Mass Effect computer games containing an extra,
18 undisclosed program that secretly installed onto their computers, without notice or
19 opportunity for consent. Class members would not have purchased the Mass
20 Effect computer game and/or paid as much as they did had they known the truth
21 about the product.
22
23

24 46. **Typicality:** Plaintiff's claims are typical of the claims of the other
25 proposed class members. Plaintiff purchased a Mass Effect computer game
26 designed and created by defendant which contained an undisclosed, secret,
27
28

1 separately installed, stand alone, unremovable DRM program which would install
2 itself to the command and control center of the computer and oversee function and
3 operation on the computer, preventing certain user actions, preventing certain user
4 programs from operating, or disrupting hardware operations.
5

6
7 47. **Adequacy**: Plaintiff will fairly and adequately protect the interests of
8 the class. Plaintiff is familiar with the basic facts that form the bases of the
9 proposed class members' claims. Plaintiff's interests do not conflict with the
10 interests of the other class members that he seeks to represent. Plaintiff has
11 retained counsel competent and experienced in class action litigation who will
12 prosecute this action vigorously. Plaintiff's counsel have successfully prosecuted
13 complex actions including consumer protection class actions. Plaintiff and
14 plaintiff's counsel will fairly and adequately protect the interests of the class
15 members.
16
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19 48. **Superiority**: The class action device is superior to other available
20 means for the fair and efficient adjudication of the claims of plaintiff and the
21 proposed class members. The relief sought per individual member of the class is
22 small given the burden and expense of individual prosecution of the potentially
23 extensive litigation necessitated by the conduct of defendant. Furthermore, it
24 would be virtually impossible for the class members to seek redress on an
25 individual basis. Even if the class members themselves could afford such
26
27
28

1 individual litigation, the court system could not.

2 49. Individual litigation of the legal and factual issues raised by the
3
4 conduct of defendant would increase delay and expense to all parties and to the
5 court system. The class action device presents far fewer management difficulties
6 and provides the benefits of a single, uniform adjudication, economies of scale and
7 comprehensive supervision by a single court.
8

9 50. Given the similar nature of the class members' claims and the absence
10 of material differences in the state statutes and common laws upon which the class
11 members' claims are based, a nationwide class will be easily managed by the Court
12 and the parties.
13
14

15 51. The court may be requested to also incorporate subclasses of
16 plaintiffs, defendants, or both, in the interest of justice and judicial economy.
17

18 52. In the alternative, the class may be certified because:

19 a. the prosecution of separate actions by the individual members
20 of the class would create a risk of inconsistent or varying adjudication
21 with respect to individual class members which would establish
22 incompatible standards of conduct by defendant;
23

24 b. the prosecution of separate actions by individual class members
25 would create a risk of adjudications with respect to them which
26 would, as a practical matter, be dispositive of the interests of other
27
28

1 class members not parties to the adjudications, or substantially impair
2 or impede their ability to protect their interests; and

3
4 c. defendant has acted or refused to act on grounds generally
5 applicable to the class, thereby making appropriate final and
6 injunctive relief with respect to the members of the class as a whole.
7

8 **FIRST CAUSE OF ACTION**
9 **(Violations of Consumer Legal Remedies Act,**
10 **Civil Code §§ 1750, et seq.)**

11 53. Plaintiff hereby incorporates by reference the allegations contained in
12 all preceding paragraphs of this complaint.

13
14 54. The California Consumer Legal Remedies Act (“CLRA”) applies to
15 defendant’s actions and conduct described herein because it extends to transactions
16 that are intended to result, or which have resulted, in the sale of goods to
17 consumers. Plaintiff and the members of the class are consumers who purchase
18 goods (Mass Effect computer games) from defendant for personal, family, or
19 household purposes, and are “consumers” under Civil Code section 1761(d).
20

21
22 55. The Mass Effect computer games that plaintiff and each of the class
23 members own are “goods” within the meaning of Civil Code section 1761(a).
24

25 56. Defendant has violated the CLRA in at least the following respects:

26 a. In violation of Section 1770(a)(5), defendant has represented
27 that the Mass Effect computer game has characteristics, uses,
28

1 approval, and benefits it does not have;

2 b. In violation of Section 1770(a)(7), defendant has represented that
3 the Mass Effect computer game is of a particular standard, quality or
4 grade, or that goods are of a particular style or model, when it is not;
5 and
6

7
8 c. In violation of Section 1770(a)(14), defendant has represented that
9 the Mass Effect computer game confers or involves rights, remedies,
10 or obligations which it does not have or involve, or which are
11 prohibited by law.
12

13
14 57. Defendant concealed material facts regarding the Mass Effect
15 computer games from plaintiff and the members of the class, including the fact that
16 the Mass Effect computer games contained an undisclosed, secret, separately
17 installed, stand alone, unremovable DRM program which would install itself to the
18 command and control center of the computer and oversee function and operation
19 on the computer, preventing certain user actions, preventing certain user programs
20 from operating, or disrupting hardware operations. Had defendant disclosed such
21 information, it would have been made known to plaintiff and members of the class
22 through the marketing and advertising presented to plaintiff and members of the
23 class by defendant, retailers, resellers, the trade press, and others.
24
25
26
27

28 58. Defendant's failure to disclose the truth about Mass Effect's

1 companion DRM program, and defendant's conscious concealment of that fact, are
2 unfair, misleading, and deceptive trade practices under the provisions of the
3
4 CLRA, Civil Code § 1770 (a)(5), (7), and (14).

5 59. Defendant's deceptive acts and omissions occurred in the course of
6
7 selling a consumer product and have occurred continuously through the filing of
8
9 this action.

10 60. Plaintiff and the members of the class relied upon defendant to
11
12 provide them with full and complete disclosure regarding the Mass Effect
13
14 gamedisk and all of its contents prior to installation of the programs on the
15
16 gamedisk. Defendant intentionally failed to inform plaintiff and the members of
17
18 the class of the full disk contents to their detriment. Plaintiff and the members of
19
20 the class have all been directly and proximately injured by defendant's conduct,
21
22 and such injury includes the purchase of Mass Effect computer games, which they
23
24 would not have purchased and/or would not have paid as much for were they
25
26 truthfully and fully informed of material facts concerning the products.

27 61. In accordance with Civil Code § 1780 (a), plaintiff and members of
28
29 the Class seek injunctive and equitable relief as to defendant's violations of the
30
31 CLRA; however, in accordance with Civil Code § 1782(a) & (d), plaintiff will
32
33 subsequently amend this Class Action Complaint to include a request for damages.
34
35 Plaintiff requests that this court enter such orders or judgments as may be

1 necessary to restore to any person in interest any money which may have been
2 acquired by means of such unfair business practices, and for such other relief as
3 provided in Civil Code § 1780 and the Prayer for Relief.
4

5
6 **SECOND CAUSE OF ACTION**
7 **(Trespass to Chattels, Nuisance and Interference**
8 **With Use of Property)**

9
10 62. Plaintiff hereby incorporates by reference the allegations contained in
11 all preceding paragraphs of this complaint.

12
13 63. Plaintiff and members of the class, at all times relevant to this action,
14 were the owners and/or possessors of computers.

15
16 64. Plaintiff and members of the class are informed and believe that,
17 beginning in September 2008, Electronic Arts, without Plaintiff's and class
18 members' consent, or in excess of any consent given, knowingly and intentionally
19 accessed Plaintiff's and class members' property, thereby intermeddling with
20 Plaintiff's and class members' right to possession of the property and causing
21 injury to Plaintiff and the members of the class.

22
23 65. Electronic Arts engaged in deception and concealment in order to gain
24 access to the computers of class members to install its SecuROM DRM Program.

25
26 66. Electronic Arts undertook the following actions with respect to each
27 class member's computer:
28

- 1 a. Electronic Arts accessed and obtained command control over the
2 user's computer during the installation process;
3
4 b. Electronic Arts caused the installation of a new program onto the
5 hard drive of the user's computer;
6
7 c. Electronic Arts programmed the installation to make changes and
8 additions to the registry (the command center and heart of
9 computer operations) of the user's computer.
10
11 d. Electronic Arts programmed the operation of its SecuROM
12 program to function and operate without notice or consent on the
13 part of the owner of the computer, and completely outside of the
14 control of the owner of the computer.
15

16 67. All these acts described above were acts in excess of any authority
17 any user granted when he or she permitted Electronic Arts entry into their
18 computers for purposes of installing the Mass Effect computer game, since none of
19 these acts was in furtherance of installing the Mass Effect computer game. By
20 engaging in deception and misrepresentation, whatever authority or permission
21 users may have granted to Electronic Arts for purposes of installing the Mass
22 Effect computer game was vitiated.
23
24
25

26 68. Electronic Arts' installation and operation of its SecuROM program
27 used, interfered, and/or intermeddled with Plaintiff's and Class members' computer
28

1 systems. Such use, interference and/or intermeddling was without Class members'
2 consent or, in the alternative, in excess of Plaintiff's and Class members' consent.
3

4 69. Electronic Arts' installation and operation of its SecuROM program
5 constitutes trespass, nuisance, and an interference with Class members' chattels, to
6 wit, their computers.
7

8 70. Electronic Arts' installation and operation of its SecuROM program
9 impaired the condition and value of Class members' computers.
10

11 71. Electronic Arts' trespass to chattels, nuisance, and interference caused
12 real and substantial damage to Plaintiff and the other Class members.
13

14 72. As a direct and proximate result of Electronic Arts' trespass to
15 chattels, nuisance, interference, unauthorized access of and intermeddling with
16 Plaintiff's and Class members' property, Plaintiff and Class members have been
17 injured and impaired in the condition and value of Class members' computers, as
18 follows:
19

20 e. By consuming the resources of and/or degrading the performance
21 of Class members' computers (including hard drive space,
22 memory, processing cycles, and Internet connectivity);
23

24 f. By diminishing the use of, value, speed, capacity, and/or
25 capabilities of Class members computers;
26

27 g. By devaluing, interfering with, and/or diminishing Class members'
28

1 possessory interest in their computers;

2 h. By altering and controlling the functioning of Class members'
3 computers;

4 i. By infringing on Class members' right to exclude others from their
5 computers;

6 j. By infringing on Class members' right to determine, as owners of
7 their computers, which programs should be installed and operating
8 on their computers;

9 k. By tying Class members' right to utilize the Mass Effect computer
10 game upon the undisclosed, uninformed, secret installation of a
11 second program;

12 l. By compromising the integrity, security, and ownership of class
13 members' computers because the SecuROM program can be used
14 by Electronic Arts or others to remotely control, reduce, or alter
15 the functioning of class members' computer programs; and

16 m. By forcing consumers to expend money, time, and resources in
17 order to effectuate the removal of the SecuROM program installed
18 on the computers of Class members without notice or consent.

19 73. By virtue of the Governing Law provision in Electronic Arts' EULA,
20 all class members, regardless of where they reside, regardless of where they made
21

1 their purchase of the Mass Effect computer game, and regardless of physical
2 location of the computers upon which the trespass was perpetrated, are all equally
3 and identically governed by California Law as it is applied to California residents,
4 therefore a global trespass class may be certified using California law as it is
5 applied to California residents.
6
7

8 74. Plaintiff, on behalf of himself and the Class, seeks injunctive relief
9 restraining Electronic Arts from trespass to chattels, to provide an easy-to-use
10 uninstall tool for the SecuROM program, and damages.
11

12 **THIRD CAUSE OF ACTION**
13 **(Violation of the Copyright Act, 17 U.S.C. § 109)**

14 75. Plaintiff hereby incorporates by reference the allegations contained in
15 all preceding paragraphs of this complaint.
16

17 76. Electronic Arts sold lawful, copyrighted copies of its Mass Effect
18 computer game to plaintiff and to consumers worldwide.
19

20 77. Pursuant to the terms of the purchase of the copyrighted Mass Effect
21 computer game from Electronic Arts, plaintiff and all other purchasers were given
22 rights to unlimited possession of the game.
23

24 78. Pursuant to the terms of the purchase of the copyrighted Mass Effect
25 computer game from Electronic Arts, plaintiff and all other purchasers were given
26 no time limits on their right to possession of the game.
27
28

1 79. Pursuant to the terms of the purchase of the copyrighted Mass Effect
2 computer game from Electronic Arts, plaintiff and all other purchasers were given
3 rights to possession of the game upon payment of a single, unitary price and were
4 not required to pay any additional sums, whether periodic or otherwise.
5

6 80. Pursuant to the terms of the purchase of the copyrighted Mass Effect
7 computer game from Electronic Arts, none of the conditions of purchase imposed
8 by Electronic Arts upon plaintiff and other class members were imposed in order to
9 protect Electronic Art's property interests in that particular copyrighted copy of the
10 gamedisk.
11

12 81. Upon purchase of the copyrighted Mass Effect computer game from
13 Electronic Arts, plaintiff and all other purchasers of the copyrighted gamedisk
14 were expressly permitted to dispose of the game if they so chose.
15
16

17 82. Upon purchase of the copyrighted Mass Effect computer game from
18 Electronic Arts, plaintiff and all other purchasers of the gamedisk were expressly
19 permitted to transfer their copy of the game to others, if they so chose.
20
21

22 83. In no instance and at no time did Electronic Arts require that plaintiff
23 or other purchasers of the Mass Effect gamedisk to return the copyrighted copy of
24 the Mass Effect computer game back to Electronic Arts, either upon conclusion of
25 the purchaser's use of the game, or at any other time, or upon any other
26
27
28 circumstance.

1 84. Upon its sale of a copyrighted copy of the Mass Effect computer
2 game, Electronic Arts exhausted its statutory rights to control the distribution of
3 that copy.
4

5 85. Pursuant to 17 U.S.C. § 109, plaintiff and all other purchasers were
6 entitled, without the authority of the copyright owner, to sell, rent, or otherwise
7 dispose of that copy of the Mass Effect computer game in their possession.
8

9 86. Plaintiff and all other purchasers of the Mass Effect computer game
10 from Electronic Arts are, by virtue of the rights granted under 17 U.S.C. § 109,
11 entitled to the use and enjoyment of the software with the same rights that exist in
12 the purchase of any other good.
13
14

15 87. Despite the fact that plaintiff and all other purchasers of the
16 copyrighted Mass Effect computer game from Electronic Arts own their copy of
17 the game by virtue of their purchase, Electronic Arts deliberately and intentionally
18 sabotaged the games' ability to be sold or transferred to others by coupling the
19 game with the SecuROM program that would render the copy of the game
20 unplayable.
21
22

23 88. The SecuROM DRM program directly, expressly, and intentionally
24 interferes with the statutory rights of consumers to freely dispose of their copy of
25 the copyrighted Mass Effect computer game by sale or transfer.
26

27 89. Wherefore plaintiff, on behalf of himself and the class, seeks
28

1 declaratory relief that the SecuROM DRM program embedded on the Mass Effect
2 gamedisk and mandatorily loaded along with the Mass Effect game, constitutes an
3 unlawful a violation of the Copyright Act, 17 U.S.C. § 109. Wherefore plaintiff,
4 on behalf of himself and the class, seeks an order for the removal of all restraints
5 and limitations imposed by EA upon the lawful and unrestricted transfer of all
6 copyrighted copies of the Mass Effect gamedisk, including the removal of the
7 SecuROM DRM protection program.
8
9

10
11 **FOURTH CAUSE OF ACTION**
12 **(Violations of Unfair Competition Law, Business &**
13 **Professions Code §§ 17200, et seq.)**

14 90. Plaintiff hereby incorporates by reference the allegations contained in
15 all preceding paragraphs of this complaint.

16 91. Plaintiff brings this cause of action on behalf of himself, the class, and
17 in his capacity as a private attorney general.
18

19 92. Defendant's actions, as complained of herein, constitute unfair,
20 deceptive, and/or unlawful practices committed in violation of the Unfair
21 Competition Law, Bus. & Prof. Code §§ 17200 et seq.
22

23 93. Defendants violated the "fraudulent" prong of § 17200, the "unfair"
24 prong of § 17200, and the "unlawful" prong of § 17200 by the conduct alleged
25 herein. Defendant's acts and practices have and/or are likely to deceive members
26 of the consuming public.
27
28

1 94. All of the conduct alleged herein occurred in the course of defendant's
2 business. Defendant's wrongful conduct was part of a pattern or generalized
3 course of conduct repeated on thousands of occasions.
4

5 95. Plaintiff and members of the class suffered injury in fact and lost
6 money or property as a result of defendant's conduct because they would not have
7 purchased the Mass Effect computer game and/or paid as much for it had they
8 known the true nature of all of the products on the gamedisk.
9
10

11 96. Plaintiff, on behalf of himself and each member of the class, seeks
12 individual restitution, injunctive relief, and other relief allowed under section
13 17200, et seq.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff and the proposed class members request that the
17 Court enter an order or judgment against defendant including the following:
18

- 19 1. Certification of the action as a class action pursuant to Rule
20 23(b)(2) of the Federal Rules of Civil Procedure with respect to
21 plaintiff's claims for injunctive relief, and Rule 23(b)(3) of the
22 Federal Rules of Civil Procedure with respect to the claims for
23 damages, and appointment of plaintiff as class representative and his
24 counsel of record as class counsel;
25
- 26 2. Damages in the amount of monies paid for Mass Effect games
27
28

1 (for purposes of clarity, Plaintiff expressly disclaims damages
2 pursuant to the CLRA at this time);

3
4 3. Actual damages, statutory damages, punitive or treble damages,
5 and such other relief as provided by the statutes cited herein (for
6 purposes of clarity, Plaintiff expressly disclaims damages pursuant to
7 the CLRA at this time);

8
9 4. For pre-judgment and post judgment interest according to
10 proof;

11
12 5. Equitable relief in the form of restitution and/or disgorgement
13 of all unlawful or illegal profits received by defendant as a result of
14 the unfair, unlawful and/or deceptive conduct alleged in herein;

15
16 6. Other appropriate injunctive relief;

17
18 7. The costs of bringing this suit, including reasonable attorneys'
19 fees; and

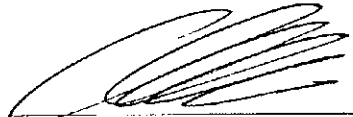
20
21 8. All other relief to which plaintiff and members of the proposed
22 class may be entitled at law or in equity.
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JURY TRIAL DEMAND

The Plaintiff hereby demands a trial by jury of all issues so triable.

DATED this 6th day of October, 2008.



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