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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JAMES "JIM" BROWN Plaintiff,  
13 Plaintiff,

14 vs.

15 ELECTRONIC ARTS, INC, a  
16 Delaware corporation; and DOES 1-10,  
17 Defendants.

Case No.

CV09 01598 MMM (RZ)

COMPLAINT FOR:

- 1. Unfair Competition in Violation of 15 U.S.C. § 1125(a)
- 2. Invasion of Privacy (Appropriation Of Likeness)
- 3. Invasion Of Privacy In Violation Of Civ. Code § 3344 (Appropriation Of Likeness For Commercial Purposes)
- 4. Violation Of Bus. & Prof. Code § 17200 *et seq.*

ORIGINAL

18 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF**  
19 **RECORD:**

20 Plaintiff James "Jim" Brown (hereinafter "Plaintiff), through his attorneys,  
21 hereby alleges, based upon information and belief, against Defendants Electronic Arts,  
22 Inc. and DOES 1-10 (collectively "Defendant" or "EA"), as follows:  
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## INTRODUCTION

1  
2 1. This action arises out of Defendant's unauthorized advertisement and  
3 sale of products bearing the identity and likeness of plaintiff Jim Brown ("Plaintiff"),  
4 in willful and conscious disregard of the rights of Plaintiff. Specifically, Plaintiff  
5 asserts that his common law rights in his name under Section 43 of the Lanham Act  
6 and his common law right of privacy have been invaded by the unauthorized  
7 appropriation of his likeness by Defendant in multiple editions of its popular video  
8 game series, *Madden NFL*, including but not limited to, its 2008 edition (hereinafter  
9 "*Madden '08*"). Moreover, Plaintiff alleges that EA's practice of purposefully using  
10 the likeness of retired National Football League ("NFL") players like himself in select  
11 editions of *Madden NFL* without prior authorization constitutes an unfair business  
12 practice in violation of California's Unfair Competition Law, codified in Business and  
13 Professions Code, Section 17200, *et seq.* ("UCL"). As a proximate result of  
14 Defendant's conduct, Plaintiff has sustained and will continue to sustain injury and  
15 damages, in an amount to be proved at trial.

## JURISDICTION AND VENUE

16  
17 2. This is a civil action arising under the laws of the United States relating  
18 to trademarks (15 U.S.C. Sections 1125(a)). This Court has jurisdiction over the First  
19 Cause of Action pursuant to 28 U.S.C. Sections 1331 and 1338(a) and (b). This Court  
20 has supplemental jurisdiction over the Second through Fourth Causes of Action  
21 pursuant to 28 U.S.C. Section 1367.

22 3. Personal jurisdiction over Defendant is proper because it is a Delaware  
23 corporation with its principal place of business in California and Defendant has  
24 purposefully availed itself of the privilege of conducting business activities within the  
25 State of California by employing workers within California and selling its goods and  
26 services within the State. Defendant generally has maintained systematic and  
27 continuous business contacts with California.  
28



1 of the greatest lacrosse players that the United States has ever produced, with the  
2 National Lacrosse Hall of Fame stating that he was "widely considered to be the  
3 greatest lacrosse player ever." It was this dual recognition of his athletic abilities that  
4 led renowned sportswriter Bert Sugar to list Brown at the top of his list of the greatest  
5 sports stars in his book *The Greatest Athletes of All Time*.

6 11. Plaintiff is regarded as one of the most influential and accomplished  
7 athletes of all time. He has been inducted into the NFL Hall of Fame, College  
8 Football Hall of Fame and the Lacrosse Hall of Fame.

9 12. In addition to his record-breaking exploits as a professional NFL player,  
10 Plaintiff has achieved significant fame and recognition as a star of both film and  
11 television over the last four decades. From guest appearances on the highly popular  
12 1960's television series *I Spy* to supporting roles in critically acclaimed films as  
13 diverse as 1967's *Dirty Dozen* and Oliver Stone's 1999 NFL drama *Any Given*  
14 *Sunday*, Plaintiff has ingrained himself among the American public as a well known  
15 and readily identifiable public figure.

16 13. Due to his wide ranging achievements on and off the football field, there  
17 was great demand in the literary world for a book about Plaintiff's remarkable life  
18 story. In 1989, Plaintiff's autobiography, *Out of Bounds* was published by Zebra  
19 Books and became a best seller.

20 14. Plaintiff currently works with kids caught up in the gang scene in Los  
21 Angeles, California and Cleveland, Ohio, through the Amer-I-Can program which he  
22 founded in 1988. It is a life management skills organization that operates in inner  
23 cities and prisons which has achieved considerable success in its twenty years for  
24 offering inner city youth an alternative to gang life, and has garnered significant media  
25 coverage for its accomplishments over the years, due in no small part to the celebrity  
26 status of its founder.

27 15. Accordingly, Plaintiff is widely recognized by the public at large for his  
28 exploits as a football player, actor, and social activist.

1           16. Through a long and distinguished football career, Plaintiff invested  
2 substantial time, energy and effort in developing and promoting his professional skills,  
3 colorful persona, and distinctive personality. As a result of Plaintiff's efforts -- as  
4 well as his considerable achievements, success and notoriety -- he is regarded as the  
5 greatest running back that has ever played for the Cleveland Browns, as well as one of  
6 the most talented running backs to have played professional football.

7 **Plaintiff Never Signed Away any Likeness Rights to Defendant**

8           17. Today, it is customary that players sign away their name and likeness  
9 rights to the NFL Player's Union in exchange for compensation that is negotiated by  
10 the player's designated representative, such as an agent or lawyer. However, when  
11 Plaintiff played professional football, the NFL had a league wide policy that  
12 prohibited players from using lawyers or agents when negotiating compensation.  
13 Moreover, neither the NFL Player's Union nor video games existed at the time  
14 Plaintiff played professional football, so likeness rights for video games, such as  
15 Defendant's *Madden NFL*, were not contemplated during any of Plaintiff's  
16 negotiations with the Cleveland Browns during his time in the NFL.

17           18. Indeed, Plaintiff has never authorized the use of his name or likeness to  
18 be used in connection with Defendant's *Madden NFL* video game series, nor any other  
19 digital medium.

20           19. On or about November 12, 2008, Plaintiff learned that EA knowingly,  
21 intentionally and fraudulently used Plaintiff's likeness in its *Madden '08* video game  
22 without obtaining any permission or license from Plaintiff for said use. After learning  
23 of EA's appropriation of Plaintiff's likeness in *Madden '08*, Plaintiff, through his  
24 representatives, discovered that Plaintiff's likeness was also used by Defendant in  
25 various editions of *Madden NFL* dating back to 2001, as well as the most recent  
26 edition, which was released in August 2008.

1 **Defendant's Use of the Plaintiff's Likeness in Connection with the Sale of its**  
2 **Madden NFL Video Game**

3 20. EA is the number one publisher of video games in North America,  
4 reporting slightly over 4 billion dollars in revenue for fiscal year 2008.

5 21. EA engages in the manufacture, distribution, and sale of an immensely  
6 popular video game series entitled *Madden NFL*, named after the legendary NFL  
7 coach. The series began in 1989 and has enjoyed monumental success as one of the  
8 top selling video games of all times and has contributed significantly to EA's annual  
9 overall revenue.

10 22. The popularity of the *Madden NFL* series over the last twenty years is  
11 easily demonstrated by the fact that the 2009 edition of *Madden NFL* sold over 2  
12 million copies alone in its first month of sale.

13 23. Plaintiff has never entered into any agreement in which he signed away  
14 his rights of publicity and/or likeness to be used in connection with *Madden NFL* or  
15 any other video game produced by Defendant.

16 **The Continuing Harm to Plaintiff as a Result of Defendant's Conduct**

17 24. Defendants' wrongful conduct as alleged herein has caused Plaintiff to  
18 suffer injuries under state and common law for violations of his right of publicity due  
19 to his loss of control over the use of his likeness, causing him to lose monetary  
20 compensation as the appropriation of his likeness by Defendant has conferred a  
21 substantial pecuniary benefit onto Defendant through increased sales of select editions  
22 of its *Madden NFL* video game that feature Plaintiff.

23 25. Defendant's misappropriation and use of plaintiff's identity in  
24 conjunction with the manufacture, distribution and sale of its *Madden NFL* video  
25 games is likely to cause confusion among the general public about Plaintiff's  
26 endorsement of Defendant's products. In particular, consumers are likely to believe  
27 that multiple editions of Defendant's *Madden NFL* video game, are authorized,  
28

1 sponsored, approved, or otherwise related to Plaintiff and his licensees when in fact  
2 they are not.

3 26. On October 3, 2008 Defendant represented to Plaintiff's representatives  
4 that it had not used Plaintiff's name and/or likeness in any edition of *Madden NFL*  
5 that has been released within the last five years. In November 2008, Plaintiff  
6 discovered, through his representatives, that Defendant had in fact appropriated his  
7 likeness in the 2008 edition of *Madden NFL*. Shortly thereafter, Plaintiff's  
8 representatives discovered that Plaintiff's likeness had been used in the 2009 edition  
9 of *Madden NFL*, as well as in previous editions dating back to 2001.

10 27. Plaintiff has been, and continues to be injured by Defendant's deceptive  
11 and misleading conduct and unlawful acts.

### 12 **FIRST CAUSE OF ACTION**

#### 13 **(Violation of the Lanham Act, 15 U.S.C. 1125(a) – Unfair Competition)**

14 28. Plaintiff hereby incorporates by reference the allegations contained in the  
15 foregoing paragraphs as if fully set forth herein.

16 29. Plaintiff has exclusive ownership rights in his own name and likeness.

17 30. Plaintiff's name and likeness have considerable commercial value based  
18 on his status as one of the greatest running backs to have ever played professional  
19 football, one of the greatest lacrosse players of all times, as well as an extensive career  
20 as an actor in film and television spanning four decades.

21 31. Plaintiff has a reasonable interest in the commercial value of his likeness  
22 based on the fact that he has retained exclusive ownership and control in his likeness;  
23 he can only relinquish control in his likeness through licensing; and he has the right to  
24 compensation for use and distribution of his likeness.

25 32. Defendant sold multiple editions of its *Madden NFL* video game which  
26 depicted Plaintiff's likeness.

27 33. Plaintiff did not license his likeness to Defendant for use in any edition of  
28 *Madden NFL*.



1 to the inclusion of his likeness in several editions of *Madden NFL* and that he was  
2 compensated by EA for granting such permission.

3 43. Defendant invaded Plaintiff's rights of privacy and publicity in order to  
4 generate interest for the editions of *Madden NFL* that feature retired NFL players  
5 among football fans of all ages by giving them the opportunity to pit legendary teams  
6 from past years against the top teams of today, thereby increasing sales of Defendant's  
7 already immensely popular video game.

8 44. Defendant's conversion of Plaintiff's right of publicity usurps Plaintiff's  
9 ability to control his public image and dilutes his ability to effectively market such  
10 image, all to the detriment of Plaintiff's reputation and goodwill.

11 45. Plaintiff is informed and believes, and thereon alleges that, as a  
12 proximate result of Defendant's wrongful use of Plaintiff's likeness in connection  
13 with its publicity, advertising and sale of its products, goods, merchandise and  
14 services, as alleged herein, Plaintiff has been and/or will be deprived of monetary  
15 sums in an amount to be determined at trial.

16 46. Defendant's actions, as described herein, were committed maliciously,  
17 intentionally and with a willful and conscious disregard of Plaintiff's rights, making  
18 an award of punitive damages appropriate in order to punish and deter Defendant from  
19 engaging in the conduct alleged herein.

20 47. Plaintiff is informed and believes, and thereon alleges, that unless  
21 restrained by this Court, the Defendant will continue to infringe Plaintiff's right of  
22 publicity by continuing to use his likeness in future editions of *Madden NFL*.

### 23 **THIRD CAUSE OF ACTION**

#### 24 **(Invasion of Privacy in Violation of Cal. Civ. Code § 3344 –** 25 **Appropriation of Likeness for Commercial Purposes)**

26 48. Plaintiff hereby incorporates by reference the allegations contained in the  
27 foregoing paragraphs as if fully set forth herein.

28 49. On or about August 2007, Defendant, knowingly and without Plaintiff's

1 prior consent, invaded Plaintiff's right to privacy by appropriating Plaintiff's likeness  
2 by including a digital representation of Plaintiff in its 2008 edition of the *Madden*  
3 *NFL* video game.

4 50. Plaintiff did not become aware of Defendant's appropriation of his  
5 likeness in *Madden '08* until November 2008.

6 51. Shortly thereafter, Plaintiff became aware that his likeness had been used  
7 by Defendant in earlier editions of *Madden NFL* as well as the 2009 edition.

8 52. The appropriations of Plaintiff's likeness were unauthorized and without  
9 the prior consent of Plaintiff.

10 53. Defendant's conduct involved the appropriation of various physical  
11 attributes of Plaintiff, including but not limited to, his physical stature, running ability,  
12 and other inherently distinctive physical attributes which make Plaintiff readily  
13 identifiable to players of *Madden '08* and other editions of *Madden NFL* which  
14 feature digital representations of Plaintiff.

15 54. The appropriation by Defendant was for the purpose of increasing sales  
16 of its highly popular video game, *Madden NFL*, by using famous retired NFL players,  
17 like Plaintiff, to advertise to its customers the ability of simulating professional  
18 football games featuring classic NFL teams from years past and pitting them against  
19 NFL teams of the current era. The success of this strategy has resulted in impressive  
20 sales of several editions of *Madden NFL*, which give football fans the opportunity to  
21 pit the greatest players of the game from past years, like Plaintiff, against the top NFL  
22 players of today.

23 55. Plaintiff is informed and believes, and thereon alleges that, as a  
24 proximate result of advantage accruing to Defendant from its appropriation of  
25 Plaintiff's likeness, and as a proximate result of the Defendant's wrongful use of  
26 Plaintiff's likeness in connection with the publicity, advertising and sale of its  
27 products, goods, merchandise and services, as alleged herein, Plaintiff has been and/or  
28 will be deprived of monetary sums in an amount to be determined at trial.



1 a. Failing to disclose to its customers that Plaintiff has not consented  
2 to the use of his likeness in connection with various editions of *Madden NFL*,  
3 including but not limited to *Madden '08*;

4 b. Intentionally appropriating the likeness of Plaintiff and other  
5 retired NFL players who never contemplated or authorized the use of their  
6 likeness and identities to be used in connection with select editions of  
7 Defendant's *Madden NFL* so that it could enhance sales of its video game by  
8 advertising to its customers that digital approximations of Plaintiff and other  
9 former NFL players could be used by its customers to simulate professional  
10 football games featuring classic NFL teams; and

11 c. Engaging in this deceptive practice for the sole purpose of reaping  
12 windfall profits at the expense of Plaintiff by wrongfully appropriating his  
13 likeness, in violation of Cal. Civ. Code § 3344 and 15 U.S.C. § 1125(a), in  
14 order to enhance sales of its *Madden NFL* video game by misleading the public  
15 that Plaintiff endorsed the use of his likeness in certain editions of *Madden*  
16 *NFL*, including but not limited to, *Madden '08*.

17 62. The unlawful, unfair and deceptive business practices of Defendant as  
18 alleged herein have harmed Plaintiff, and Defendant has derived substantial revenue  
19 as a result of the unlawful conduct alleged herein.

20 63. The rights of Plaintiff have been violated by Defendant's unlawful, unfair  
21 and deceptive acts and practices, and Defendant has been, and will continue to be,  
22 unjustly enriched by the unlawful conduct as alleged herein unless and until the Court  
23 provides the relief prayed for below.

24 64. As a direct and proximate result of the unlawful conduct alleged herein,  
25 Defendant has been unjustly enriched, and has received and continue to hold ill-gotten  
26 gains, in a total amount to be determined at trial. Defendant should be required to  
27 disgorge such ill-gotten gains.

28 65. Plaintiff is informed and believes and, on that basis, alleges that unless

1 restrained by this Court, Defendant will continue to infringe Plaintiff's rights of  
2 publicity. Otherwise absent such injunctive relief, irreparable harm to Plaintiff is  
3 likely to occur, and pecuniary compensation will not afford Plaintiff adequate relief  
4 for the damage to Plaintiff's good will and reputation as a result of Defendant's  
5 unauthorized appropriation of his likeness.

6  
7 WHEREFORE, Plaintiff demands judgment as follows:

- 8 a. For an order by the Court enjoining Defendant and his agents, servants,  
9 and employees, and all such persons and/or entities acting under, in  
10 concert with, or for it from using the likeness of Plaintiff in connection  
11 with any of its products or in connection with the marketing, distribution  
12 or advertising of any of its products, including but not limited to, the  
13 *Madden NFL* video game series;
- 14 b. An order requiring Defendant: (a) to cease the acts of unfair competition  
15 alleged herein; (b) to seek authorization from retired NFL players, like  
16 Plaintiff, before using their likenesses in its products; and (c) to comply  
17 with this State's statutory and common law rights of publicity concerning  
18 the use of one's likeness for pecuniary profit or gain;
- 19 c. An order requiring Defendant to deliver all advertising, merchandise,  
20 promotional materials, magazines, and any and all things bearing  
21 Plaintiff's likeness to Plaintiff for destruction or other disposition by  
22 Plaintiff;
- 23 d. Plaintiff also requests that Defendant be made to account to Plaintiff for  
24 all sales of *Madden NFL* and all related merchandise, featuring Plaintiff's  
25 likeness to the date of judgment herein in order that the Court may order  
26 the disgorgement of all profits earned by Defendant as a result of its  
27 wrongful acts or such other amount as the Court shall find to be just  
28 according to the circumstances of the case;

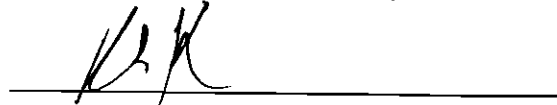
- 1 e. For general damages according to proof at trial;
- 2 f. For special damages according to proof at trial;
- 3 g. For exemplary or punitive damages against Defendant for their
- 4 oppressive, fraudulent, and malicious conduct;
- 5 h. Pre-judgment and post-judgment interest at the maximum rate allowable
- 6 at law;
- 7 i. The costs and disbursements incurred by Plaintiff in connection with this
- 8 action, including reasonable attorneys' fees and costs of suit; and
- 9 j. Such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: March 6, 2009

**KALCHEIM LAW GROUP, P.C.**



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