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C/PVT

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

C08 04421 PVT

15 Melissa Thomas, an individual, on
16 behalf of herself and all others
17 similarly situated,

18 Plaintiff,

19 v.

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

22 Defendants.

COMPLAINT

BY FAX

JURY DEMAND

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COMPLAINT

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CLASS ACTION COMPLAINT

Plaintiff Melissa Thomas ("Plaintiff"), by her attorneys, states this complaint against Defendant ELECTRONIC ARTS, INC. ("Electronic Arts" or "EA"). Plaintiff's allegations are based on information and belief, except to her own actions, which are based on knowledge. Plaintiff's allegations on information and belief are based on the investigation of her counsel, and facts that are a matter of public record.

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NATURE OF THE CLAIM

1. This is a class action concerning the *Spore* computer game ("Spore") published by Electronic Arts. Spore is advertised and sold as a game for the PC or Macintosh. When consumers make their purchase of Spore, they are told that they are purchasing "an exciting new simulation game that lets you develop your own personal universe." Purchasers are invited to install and use the game on their computers.

2. What purchasers are *not* told is that, included in the purchase, installation, and operation of Spore is a second, undisclosed program. The name of the second program is SecuROM, which is a form of Digital Rights Management (DRM) for computer games. Although consumers *are* told that the game uses access control and copy protection technology, consumers are not told that this technology is actually an entirely separate, stand-alone program which will

1 download, install, and operate on their computers, along with the Spore download.
2 Consumers are given no control, rights, or options over SecuROM. The program
3 is uninstalleable. Once installed, it become a permanent part of the consumer's
4 software portfolio. Even if the consumer uninstalls Spore, and entirely deletes it
5 from their computer, SecuROM remains a fixture in their computer unless and
6 until the consumer completely wipes their hard drive through reformatting or
7 replacement of the drive.
8
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10
11 3. This action is brought on behalf of a class of all consumers globally
12 who have purchased the Spore computer game. Electronic Arts' intentionally did
13 not disclose to any such purchasers that the Spore game disk also possessed a
14 second, hidden program which secretly installed to the command and control
15 center of the computer (Ring 0, or the Kernel), and surreptitiously operated,
16 overseeing function and operation on the computer, preventing the computer from
17 operating under certain circumstances and/or disrupting hardware operations.
18 These actions constitute violations of the California Consumer Legal Remedies
19 Act, Civil Codes § 1750 et seq. and California's Unfair Competition Law, Business
20 & Professions Code §§ 17200, et seq., and further constituted trespass to chattels.
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25 **INTRODUCTORY ALLEGATIONS**

26 4. This consumer class action arises from defendant Electronic Arts
27 Inc.'s ("Electronic Arts" or "EA" or "defendant"), engaging in deceptive and
28

1 unlawful conduct in designing, marketing, distributing, and selling a computer
2 game disk that contains undisclosed and unconsented to Digital Rights
3 Management (DRM) technology.
4

5 5. Electronic Arts, Inc. (NASDAQ: ERTS) is a worldwide American
6 developer, marketer, publisher, and distributor of computer and computer games.
7 Established in 1982, the company was a pioneer of the early home computer games
8 industry. Originally, EA was a home computing game publisher. In the late
9 1980s, the company began developing games in-house and supported consoles by
10 the early 1990s. EA later grew via acquisition of several successful developers.
11 By the early 2000s, EA had become one of the world's largest third-party
12 publishers. In 2007 EA ranked 8th on the list of largest software companies in the
13 world. In May 2008, the company reported net annual revenue of US\$4.02 billion
14 in fiscal year 2008.
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19 **The Spore Computer Game**

20 6. The full version of the Spore Computer game was released on
21 September 4, 2008 in Australia and the Nordic region. The game was released
22 September 5, 2008 in Europe, Japan, South America and New Zealand; and was
23 released on September 7, 2008 in North America and Asia Pacific territories.
24 Spore is also available for direct download from Electronic Arts.
25
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27

28 7. Spore allows a player to control the evolution of a species from its

1 beginnings as a unicellular organism, through development as an intelligent and
2 social creature, to interstellar exploration as a spacefaring culture. It has drawn
3 wide attention for its massive scope, and its use of open-ended gameplay and
4 procedural generation.
5

6
7 8. The marketing materials for the game state:

8 Create universal wonder in Spore, an exciting new simulation
9 game that lets you develop your own personal universe. Work
10 your way through five evolutionary phases, including Cell,
11 Creature, Tribe, Civilization and Space. that offer unique
12 challenges, thrills and goals. For example, you can start in Cell
13 and nurture one species from a simple aquatic organism all the
14 way until it becomes a sentient life form. Or you can jump right
15 in and begin building tribes and civilizations on multiple planets.
16 What you do with your universe is totally up to you.

17 The powerful creation tools of Spore are easy to use, allowing
18 you to effortlessly design every aspect of your universe.
19 Creatures, vehicles, building and even starships are all within
20 your grasp. While Spore is a single-player game, your creations
21 and other players' creations are automatically shared between
22 your galaxy and theirs, offering a nearly limitless number of
23 worlds to visit and enjoy. You can also go online to view the
24 incredible things other players have made and can even pull those
25 items into your universe. Spore gives you the chance to make
26 worlds and beings that evolve, grow and delight you every step
27 of the way.
28

The creators of The Sims present the next big bang - SPORE.
Create your unique creature and guide it on an epic journey
through a universe of your own creations. Play any way you
choose in the five evolutionary phases of Spore: Cell, Creature,
Tribe, Civilization, and Space. How you play and what you do
with your universe is entirely up to you. Spore gives you a
variety of powerful yet easy-to-use creation tools so you can

1 create every aspect of your universe: creatures, vehicles,
2 buildings, and even starships.

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

4 9. The Spore game must be installed from the gamedisk (cd) onto a
5 computer in order for the game to function.
6

7 10. When a user installs the Spore game, a second program, SecuROM, is
8 automatically and secretly installed along with the Spore game.
9

10 11. SecuROM installs itself to The Kernel of the computer (the
11 administrative command and control center of the computer). Once installed,
12 SecuROM then allows itself to access to all parts of the computer.
13

14 12. The operating system of a computer utilizes different parts or levels of
15 the computer, determined by the need of the software for access and control over
16 different aspects of the hardware or software. These parts are commonly called
17 Ring 0, 1, 2 and 3. Ring 0 is sometimes referred to as the Kernel. The Kernel is
18 usually used by the Operating System to run the computer and it has access to
19 everything on the computer. Ring 3, which is the normal zone used by Software
20 has much lower permissions. SecuROM represents that it installs itself to Ring 3
21 (by having a part of itself called the UA7service.exe written to Ring 3), when in
22 fact it installs its primarily operational code to Ring 0.
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27 13. Writing itself to the Kernel of the computer allows SecuROM to have
28

1 control over all other programs and processes on the computer, including
2 equipment that computer users are legally permitted and entitled to possess (e.g.,
3 two cd/dvd drives on the computer).

4
5 14. Like any program, SecuROM uses computer resources. It uses
6 memory, processor cycles, and program handles (leaving less for any uses the
7 owner might have had planned for their computer). To transmit information back
8 to EA, SecuROM uses the computer owner's internet connection. Whenever it
9 downloads, installs, or runs, SecuROM uses resources belonging to the computer
10 owner, which, by definition, make those resources unavailable for other tasks.
11 Like any program, SecuROM takes up space on the user's hard drive. Like any
12 program, SecuROM offers computer users another opportunity for something to go
13 wrong, if it failed. And, just like any other program, SecuROM did have its
14 failures.¹

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20 ¹ See, for example, the following reviews from the amazon.com website:

21
22 I installed this game on my fiance's computer (a fancy pants Alienware)that runs Vista
23 smoothly and has more than the minimum required to play the game. The game itself runs fine,
24 even with all settings on high, but that is not what it destroyed. The SecuROM disabled his
25 firewall, anti-virus and much of the functionality of Vista. He can no longer install any other
26 programs to his computer, or use his task manager because his entire computer freezes up. After
27 many months of being problem free on Vista, he now gets regular visitation from the BSOD-
28 only after this game was installed. He's a computer engineer and he thought it might be the game.
He called Windows tech support, and they came to the same conclusion. Meanwhile I've been on
hold with EA's technical support for a good half hour so far (I've been typing this while waiting
with brain numbing techno hold music). I figure they owe me another install as it appears that
fixing his computer would require a non-refunding uninstall or clean installation of Vista with a
disc image restore dated pre-Spore.

1 15. No notification of the nature, function, and operation of the SecuROM
2 program was provided to Spore purchasers. No notice of its secret installation was
3 provided to persons who loaded and installed the Spore computer game. No one
4 was told that it was a separate program installing to the Kernel of the computer and
5 that it could not be uninstalled.
6

7
8 16. At EA's customer support website, EA responded in detail to the
9 question: "How will Digital Rights Management (DRM) work with Spore and
10 Spore Creature Creator?"
11

12 **QUESTION**

13 How will Digital Rights Management (DRM) work with Spore and
14 Spore Creature Creator?

15 **Answer**

16 The DRM solution implemented for the *Spore* and *Spore Creature*
17 *Creator* changes copy protection from being key-disc based, which
18 requires authentication every time you play the game by requiring a
19 disc in the drive, to a one-time online authentication. This system has
20

21 http://www.amazon.com/review/R114L1UUSEQE4I/ref=cm_srch_res_rtr_alt_2

22 tried out spore creature creator and really liked it so I went and bought the full version. I
23 didn't know that it also came with securom when I installed the software to play spore securom
24 was also installed with it. At first everything seemed fine, and I was enjoying spore, but then my
25 computer started locking up and telling me I wasn't authorized. I uninstalled spore, but securom
26 is still there! I can't get rid of it and now my whole computer doesn't work. Please don't buy this
27 game. it's not worth the lost hours. I really wish they had an Xbox version so that I wouldn't have
28 destroyed my computer trying to play a game. This is just evil.

27 http://www.amazon.com/review/R2RK9S7X1O7P1I/ref=cm_srch_res_rtr_alt_12

1 the added benefit of allowing you to seamlessly play your game
2 without requiring the game disc in the drive.

3 **KEY POINTS:**

- 4
- 5 • This system allows you to authenticate your game on three
6 computers with the purchase of one disc. *EA* Customer Service
7 is on hand to supply any additional authorizations that are
8 warranted. This will be done on a case-by-case basis by
9 contacting Customer Support.
 - 10 • Games are authorized to your machine when you first install
11 and launch the game.
 - 12 • We've all had those times when the discs get lost or scratched,
13 and you can't play a game you've bought because you need a
14 working disc in the drive. With this new system, players will no
15 longer need the disc to play the game, but can instead simply
16 retain the disc as backup for reinstallation.

17 **FAQ:**

18 **Q: What is the difference between the old PC disc authentication
19 solution and the new online model?**

20 A: Two things have changed:

- 21 • First, authentication of your game disc has changed from a
22 physical format to an online format, eliminating the need to
23 have a disc in the drive when playing.
- 24 • Second, with online authentication, consumers now connect to
25 the Internet the first time the game is launched and are only
26 required to reconnect if they are downloading new game
27 content.

28 **Q: How will the game authenticate now?**

A: We authenticate your game online when you install and launch it
for the first time.

**Q: Do I have to reauthenticate after the first time my game is
launched?**

A: Reauthentication is required only if you make significant changes
to your PC's hardware, reformat your hard drive, or in some cases,

1 upgrade your Operating System. Multiple installations of the game on
2 the same computer do not count against the number of computers the
3 game can be installed on.

4 **Q: What are the benefits of online authentication versus the disc-**
5 **based model?**

6 A: The new system means you don't need to have the game disc in
7 your computer in order to play. Losing a disc will no longer keep you
8 from enjoying a game you already have installed.

9 **Q: Am I able to play my game on more than one computer? Do I**
10 **need the disc for that?**

11 A: You'll be able to install and play your game on up to three
12 computers without the need of the game disc. Your computer is
13 authorized after installation and the initial launch of the game.

14 **Q: Will I still be able to play my game offline?**

15 A: Yes, you can play offline, however, we do hope that you will play
16 online. Sharing creatures, buildings, and vehicles with other players is
17 something that is unique to *Spore* and *Spore Creature Creator*, and is
18 one of the coolest features of the game.

19 **Q: What happens when I've reached the maximum number of**
20 **computers for my game and I need more? (Due to computer**
21 **upgrades, theft, crashes, etc.)**

22 A: EA Customer Support is on hand to supply any additional
23 authorizations that are warranted. This will be done on a case-by-case
24 basis by contacting Customer Support.

25 **Q: Why are Maxis and EA implementing this new authentication**
26 **process?**

27 A: This solution serves to protect our software from piracy. It has the
28 added benefit of allowing you to activate your game on multiple
machines without needing the game disc in the drive when playing the
game.

[http://support.ea.com/cgi-
bin/ea.cfg/php/enduser/std_adp.php?p_faqid=19743](http://support.ea.com/cgi-bin/ea.cfg/php/enduser/std_adp.php?p_faqid=19743)

1 17. Nowhere in any of EA's discussions, responses or explanations of its
2 DRM did EA disclose that the Spore disk contained a separately installed, stand
3 alone, uninstallable DRM program which would install itself to the command and
4 control center of the computer and oversee function and operation on the computer,
5 preventing certain user actions, preventing certain user programs from operating,
6 or disrupting hardware operations. In fact, all of EA's representations about its
7 Spore DRM talk in terms of "online authentication" – as if all DRM protection was
8 entirely online-based and resident at EA's website, instead of being program-based
9 at the operating system level of the user's own computer. These representations by
10 EA are clearly significant misrepresentations of EA's DRM regime given the fact
11 that the actual process involves a separate DRM program permanently installed
12 onto the hard drive of the user's computer.
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18 18. As of September 22, 2008, almost 3,000 consumers have posted
19 reviews of the Spore computer game to the Amazon.com website. More than
20 2,500 of those reviews have given the game a "one star" review (the lowest rating
21 Amazon permits), with the vast majority of the low ratings due to the DRM regime
22 that the Spore computer game universally imposes upon its users.
23
24

25 19. The following are representative excerpts of a tiny percentage of the
26 reviews at the Amazon.com review website:
27

28 We don't want DRM crud on our computer because it is essentially a

1 form of spyware or even could be considered a virus. I didn't even
2 know about SecuROM until I read these reviews and found the folder
3 sitting HIDDEN on my computer. I'm not paying EA to SPY on my
4 legit use of the software they released.

5 [http://www.amazon.com/review/R359ZRMVQM7Z7C/ref=cm_srch_r
7 es_rtr_alt_2](http://www.amazon.com/review/R359ZRMVQM7Z7C/ref=cm_srch_r
6 es_rtr_alt_2)

8 This game installed virus/spyware "DRM" software on my computer
9 WITHOUT MY PERMISSION that has slowed down my entire
10 system significantly. The same thing happened to three other people I
11 know who purchased this game. My recommendation: Avoid Spore at
12 all costs, unless you want your computer's speed and performance
13 severely slowed, even when the game isn't playing.

14 [http://www.amazon.com/review/R1BE33X9NCLQ11/ref=cm_srch_r
16 s_rtr_alt_3](http://www.amazon.com/review/R1BE33X9NCLQ11/ref=cm_srch_r
15 s_rtr_alt_3)

17 The DRM for the game utilizes securom which is essentially a virus
18 that installs itself without warning when you install the game. There is
19 no way to completely remove it without reformatting and it is
20 constantly running in the background if not removed. Sucking up
21 computer resources.

22 [http://www.amazon.com/review/R1BZGIUUXY49N7/ref=cm_srch_r
24 es_rtr_alt_2](http://www.amazon.com/review/R1BZGIUUXY49N7/ref=cm_srch_r
23 es_rtr_alt_2)

25 SecuROM installs itself without any warning on the box, EULA, or
26 install prompts. What's more is that it won't uninstall when you
27 uninstall the game. You need to net search to figure out how to get rid
28 of it. SecuROM is there to gather info about your computer to look for
hardware changes and then decrement your install limit.

[http://www.amazon.com/review/R2DA7RL7YB59M6/ref=cm_srch_r
es_rtr_alt_1](http://www.amazon.com/review/R2DA7RL7YB59M6/ref=cm_srch_r
es_rtr_alt_1)

Avoid all new EA games as you will be dealing with the same
securom crap. another problem with securom, it delays your system
startup due to a kernel level driver that installs which it uses to
monitor the hardware and software in your pc (if and you cant disable
it with out damaging windows, the only way to disable it is to
manually uninstall the securom, which is a long and annoying
process)

1 http://www.amazon.com/review/R3BIN11TEHLL6/ref=cm_srch_res_rtr_alt_1

2
3 I feel that there should be a federal lawsuit against EA and SecuROM
4 mandating removal of the Malware blatantly installed at the kernel
5 level of the machine.

6 http://www.amazon.com/gp/pdp/profile/A8BRO663FCR7D/ref=cm_cr_rdp_pdp

7 Bundled with the game is a mandatory install of spyware labeled
8 DRM. This limits any single copy from being installed more than 3
9 times across ANY PC. So after 3 times, thats it, your done, go call EA
10 and try to get hassled over the legitimacy of your own copy. If you
11 want to take piracy countermeasures in this electronic sharing age,
12 then fair enough. But dont couple the game with a "sniffer" software
13 that takes up my resources. What happens if I have 4+ games that all
14 do this? Then my computer is being bogged down unnecessarily.

15 http://www.amazon.com/review/R3445W9PCYSXYM/ref=cm_srch_res_rtr_alt_4

16 The critical response has been largely good. However, each and every
17 one of those reviewers now has EA sponsored spyware, a glorified
18 virus, that they cannot remove, installed at super user level(In
19 layman's terms, that means the DRM program outranks YOU in your
20 computer hierarchy.).

21 http://www.amazon.com/review/R6CQ2EH00AN2H/ref=cm_srch_res_rtr_alt_11

22 The game is mediocre at best, but what kills it is unauthorized DRM
23 software, limitations not listed in the End User License Agreement or
24 on the box, and offers to upsell you to what should have come in the
25 box in the first place. The game installs software which is nigh
26 impossible to remove from your machine. I have already been in
27 contact with a lawyer over the issue, and I can't be the only one.
28 Spyware and false advertising - way to go EA! You have ensured I
will never buy another of your products ever again. Here's hoping you
pay through the nose in damages to everyone jilted by this trainwreck
of a piece of software.

http://www.amazon.com/review/R5BPO4KP9ACU0/ref=cm_srch_res

1 rtr alt 24

2 I have been watching this game for several months and was very
3 excited to play it, so much so that I preordered it and made the grand
4 mistake of installing the creature creator that was infested with
5 securom on both of my PCs. Unfortunately that secret file (virus) that
6 EA slipped into my computer without my permission is now
7 permanently imbedded without nothing I can do to remove it. How
8 will it and when will it affect my computer, I dont know, but I dont
9 like the idea of waiting for it to conflict like if im waiting on
10 Doomsday. I never gave you permission EA, and I will never grant
11 you such permission to implement securom or any virus into my
12 computers which means I will not buy spore or any of your games
13 until you start treating your customers with respect.

14 http://www.amazon.com/review/R3C7USV115J2KWY/ref=cm_srch_r
15 es_rtr alt 1

16 See all reviews at:

17 http://www.amazon.com/review/product/B000FKBCX4/ref=pr_all_summary_cm
18 [er_acr_txt?encoding=UTF8&showViewpoints=1](#)

19 20. Plaintiff brings this class action on behalf of a global class of
20 consumers who purchased Electronic Arts' Spore computer game which contained
21 an undisclosed, secret, separately installed, stand alone, uninstallable DRM
22 program which would install itself to the command and control center of the
23 computer and oversee function and operation on the computer, preventing certain
24 user actions, preventing certain user programs from operating, or disrupting
25 hardware operations. Plaintiff and the proposed class members would not have
26 purchased the Spore computer game and/or paid as much for it had they known the
27 truth about the product.

1 21. Plaintiff seeks actual damages, individual restitution, equitable relief,
2 civil penalties, costs and expenses of litigation, including attorneys' fees, and all
3 further relief available.
4

5 **VENUE AND JURISDICTION**

6 22. This Court has subject matter jurisdiction over this action pursuant to
7 28 U.S.C. § 1332. The aggregate claims of plaintiff and the proposed class
8 members exceed the sum or value of \$5,000,000.00.
9
10

11 23. Electronic Arts is a Delaware corporation headquartered in California
12 and is a citizen only of the states of California and Delaware. Plaintiff is a citizen
13 and resident of Maryland, and asserts claims of behalf of a proposed class whose
14 members are scattered throughout the world, and throughout the fifty states
15 (including the 48 states besides California and Delaware) and the U.S. territories:
16 there is minimal diversity of citizenship between proposed class members and the
17 Defendant.
18
19

20 24. This Court also has personal jurisdiction over defendant because (a) a
21 substantial portion of the wrongdoing alleged in this complaint took place in this
22 state, (b) defendant Electronic Arts' principle place of business is located in this
23 state, and (c) defendant is authorized to do business here, has sufficient minimum
24 contacts with this state, and/or otherwise intentionally availed itself of the markets
25 in this state through the promotion, marketing, and sale of its product in this state,
26
27
28

1 to render the exercise of jurisdiction by this Court permissible under traditional
2 notions of fair play and substantial justice.

3
4 25. Venue is proper in this District under 28 U.S.C. §1391(b) and (c). A
5 substantial portion of the events and conduct giving rise to the violations of law
6 complained of herein occurred in this District, defendant Electronic Arts Inc.'s
7 principal executive offices and headquarters are located in this District at 209
8 Redwood Shores Parkway, Redwood City, CA 94065, and defendant conducts
9 business with consumers in this District.
10
11

12 26. Jurisdiction and venue are also proper in this district because the EA
13 End User License Agreement ("EULA") contains a clause entitled "Governing
14 Law" which expressly vests jurisdiction and venue for actions related to the Spore
15 computer game and its EULA in the state and federal courts of California and this
16 district:
17
18

19 Unless expressly waived by EA in writing for the particular instance
20 or contrary to local law, the sole and exclusive jurisdiction and venue
21 for actions related to the subject matter hereof shall be the California
22 state and federal courts having within their jurisdiction the location of
23 EA's principal corporate place of business. Both parties consent to
24 the jurisdiction of such courts and agree that process may be served
25 in the manner provided herein for giving of notices or otherwise as
26 allowed by California or federal law.

25
26 **PARTIES**

27 27. Plaintiff Melissa Thomas (Plaintiff) is a citizen and resident of Prince
28

1 Georges County, Maryland. Plaintiff purchased a copy of the Spore computer
2 game. EA did not disclose that the Spore computer game contained an
3 undisclosed, secret, separately installed, stand alone, uninstallable DRM program
4 which would install itself to the command and control center of the computer and
5 oversee function and operation on the computer, preventing certain user actions,
6 preventing certain user programs from operating, or disrupting hardware
7 operations. Plaintiff would not have purchased the computer game and/or paid as
8 much for the computer game had she known the truth about the product. Plaintiff
9 brings this action on behalf of herself and all others similarly situated.
10
11
12

13 28. Defendant Electronic Arts has been and still is engaged in the
14 business of designing, creating, marketing, distributing, and/or selling computer
15 games. Defendant Electronic Arts is a Delaware Corporation with its principal
16 offices at 209 Redwood Shores Parkway, Redwood City, CA 94065. Electronic
17 Arts common shares trade on the NASDAQ (ERTS).
18
19

20 29. Plaintiff is currently ignorant of the true names and capacities,
21 whether individual, corporate, associate, or otherwise, of the defendants sued
22 herein under the fictitious names Does 1 through 75, inclusive, and therefore, sues
23 such defendants by such fictitious names. Plaintiff will seek leave to amend this
24 complaint to allege the true names and capacities of said fictitiously named
25 defendants when their true names and capacities have been ascertained. Plaintiff is
26
27
28

1 informed and believes and based thereon allege that each of the fictitiously named
2 Doe defendants is legally responsible in some manner for the events and
3
4 occurrences alleged herein, and for the damages suffered by plaintiff.

5 30. Plaintiff is informed and believes and based thereon allege that all
6 defendants, including the fictitious Doe defendants, were at all relevant times
7
8 acting as actual agents, conspirators, ostensible agents, partners and/or joint
9
10 venturers and employees of all other defendants, and that all acts alleged herein
11
12 occurred within the course and scope of said agency, employment, partnership, and
13
14 joint venture, conspiracy or enterprise, and with the express and/or implied
15
16 permission, knowledge, consent, authorization and ratification of their co-
17
18 defendants; however, each of these allegations are deemed "alternative" theories
19
20 whenever not doing so would result in a contraction with the other allegations.

18 **CLASS ALLEGATIONS**

19 31. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3) of the
20
21 Federal Rules of Civil Procedure, on behalf of herself and a class defined as
22
23 follows:

24 All persons or entities globally who purchased as an end-user a Spore
25
26 computer game.

27 Excluded from the class is defendant, any entity in which
28
29 defendant has a controlling interest or which has a controlling interest

1 in defendant, and defendant's legal representatives, predecessors,
2 successors, assigns, and employees. Also excluded from the class are
3 the judge and staff to whom this case is assigned, and any member of
4 the judge's immediate family.
5

6
7 32. Plaintiff reserves the right to revise this definition of the class based
8 on facts she learns during discovery.

9
10 33. The EA End User License Agreement ("EULA") contains a clause
11 entitled "Governing Law" as follows:

12 14. **Governing Law.** This License shall be governed by and
13 construed (without regard to conflicts or choice of law principles)
14 under the laws of the State of California as applied to agreements
15 entered into and to be performed entirely in California between
16 California residents. Unless expressly waived by EA in writing for
17 the particular instance or contrary to local law, the sole and exclusive
18 jurisdiction and venue for actions related to the subject matter hereof
19 shall be the California state and federal courts having within their
20 jurisdiction the location of EA's principal corporate place of business.
21 Both parties consent to the jurisdiction of such courts and agree that
22 process may be served in the manner provided herein for giving of
23 notices or otherwise as allowed by California or federal law. The
24 parties agree that the UN Convention on Contracts for the
25 International Sale of Goods (Vienna, 1980) shall not apply to this
26 License or to any dispute or transaction arising out of this License.
27

28 34. The above Governing Law provision vests jurisdiction in the
California state and federal courts in the district of the location of EA's principal
corporate place of business (Redwood City, CA). Thus, mandatory jurisdiction in
this U.S. District Court vests for any purchaser of the Spore game, wherever

1 purchased, either within or outside of the United States, by virtue of the express
2 EA EULA terms. The above Governing Law provision also requires the
3 application of the laws of the State of California to be applied to any purchase or
4 use of the game anywhere, as if the game were purchased entirely in California and
5 used by California residents. Thus, citizens and residents of all states and all
6 countries other than the United States are, for all purposes related to this instant
7 Complaint, similarly situated with respect to their rights and claims as California
8 residents, and therefore are appropriately included as members of the Class,
9 regardless of their residence or place of purchase of the Spore computer game.
10
11
12

13
14 35. Plaintiff is a member of the class that she seeks to represent.

15 Members of the class can be identified using records of retail sales and/or other
16 information that is kept by defendant in the usual course of business and/or in the
17 control of defendant. Class members can also be notified of the class action
18 through publication and direct mailings to address lists maintained in the usual
19 course of business by defendant.
20
21

22 36. **Numerosity**: Class members are so numerous that their individual
23 joinder is impracticable. It is estimated that the Class consists of tens of thousands
24 of members. The precise number of class members is unknown to plaintiff, but it
25 is clear that the number greatly exceeds the number to make joinder impossible.
26
27

28 37. Existence and predominance of common questions: Common

1 questions of law and fact predominate over the questions affecting only individual
2 class members. Some of the common legal and factual questions include:

- 3
- 4 a. Whether EA fails to disclose the presence of an additional
5 program on the Spore gamedisk;
- 6
- 7 b. Whether EA should have separately disclosed the presence of
8 an additional DRM program on the Spore gamedisk, and the extent
9 and nature of that program;
- 10
- 11 c. Whether defendant should have disclosed, and is liable for its
12 failure to disclose, prior to the purchase of the SecuROM program, the
13 precise details and nature of the program, where and how it would
14 install, and how it would operate, prior to any installation of the
15 program;
- 16
- 17
- 18 d. Whether defendant should have disclosed, and is liable for its
19 failure to disclose, prior to the installation of the SecuROM program,
20 the precise details and nature of the program, where and how it would
21 install, and how it would operate, prior to any installation of the
22 program;
- 23
- 24
- 25 e. Whether defendant should have obtain informed consent from
26 the user, prior to the installation of the SecuROM program
- 27
- 28 f. Whether defendant concealed crucial details concerning the

1 presence operation, function, and uninstallability of the SecuROM
2 DRM program to the class and the public;

3
4 g. Whether defendant's actions in concealing crucial details
5 concerning the presence, operation, function, and uninstallability of
6 the SecuROM DRM program were likely to deceive the public;

7
8 h. Whether defendant made representations that the Spore
9 computer game was of a particular standard or quality, which it did
10 not have;

11
12 i. Whether defendant made representations that the Spore
13 computer game had characteristics, uses, benefits, or qualities which it
14 did not have;

15
16 j. Whether, by its conduct, defendant has engaged in unfair or
17 unlawful business practices with respect to the advertising, marketing,
18 and sale of the Spore computer game;

19
20 k. Whether, by its conduct, defendant has engaged in unfair,
21 deceptive, untrue, or misleading advertising of the Spore computer
22 game;

23
24 l. Whether defendant violated consumer protection statutes and/or
25 state deceptive business practices statutes;

26
27 m. Whether, by its conduct, defendant has trespassed on the
28

1 computers of all persons who installed the Spore computer game;

2 n. Whether California law applies to all claims and claimants in
3 this action; and
4

5 o. The nature and extent of damages and other remedies to which
6 the conduct of defendant entitles the class members.
7

8 38. Defendant engaged in a common course of conduct giving rise to the
9 legal rights sought to be enforced by the class members. Similar or identical
10 statutory and common law violations, deceptive business practices, and omissions
11 regarding the product are involved. Individual questions, if any, pale by
12 comparison to the numerous common questions that predominate.
13
14

15 39. The injuries sustained by the class members flow, in each instance,
16 from a common nucleus of operative facts. In each case, defendant designed,
17 created, supplied, distributed, marketed, and/or sold the Spore computer game
18 containing the second, undisclosed computer program.
19

20 40. Class members have been damaged by defendant's misconduct. Class
21 members have purchased Spore computer games containing an extra, undisclosed
22 program that secretly installed onto their computers, without notice or opportunity
23 for consent. Class members would not have purchased the Spore computer game
24 and/or paid as much as they did had they known the truth about the product.
25
26

27 41. **Typicality:** Plaintiff's claims are typical of the claims of the other
28

1 proposed class members. Plaintiff purchased a Spore computer game designed and
2 created by defendant which contained an undisclosed, secret, separately installed,
3 stand alone, uninstallable DRM program which would install itself to the command
4 and control center of the computer and oversee function and operation on the
5 computer, preventing certain user actions, preventing certain user programs from
6 operating, or disrupting hardware operations.
7

9 42. **Adequacy**: Plaintiff will fairly and adequately protect the interests of
10 the class. Plaintiff is familiar with the basic facts that form the bases of the
11 proposed class members' claims. Plaintiff's interests do not conflict with the
12 interests of the other class members that she seeks to represent. Plaintiff has
13 retained counsel competent and experienced in class action litigation who will
14 prosecute this action vigorously. Plaintiff's counsel have successfully prosecuted
15 complex actions including consumer protection class actions. Plaintiff and
16 plaintiff's counsel will fairly and adequately protect the interests of the class
17 members.
18
19
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22 43. **Superiority**: The class action device is superior to other available
23 means for the fair and efficient adjudication of the claims of plaintiff and the
24 proposed class members. The relief sought per individual member of the class is
25 small given the burden and expense of individual prosecution of the potentially
26 extensive litigation necessitated by the conduct of defendant. Furthermore, it
27
28

1 would be virtually impossible for the class members to seek redress on an
2 individual basis. Even if the class members themselves could afford such
3 individual litigation, the court system could not.
4

5 44. Individual litigation of the legal and factual issues raised by the
6 conduct of defendant would increase delay and expense to all parties and to the
7 court system. The class action device presents far fewer management difficulties
8 and provides the benefits of a single, uniform adjudication, economies of scale and
9 comprehensive supervision by a single court.
10
11

12 45. Given the similar nature of the class members' claims and the absence
13 of material differences in the state statutes and common laws upon which the class
14 members' claims are based, a nationwide class will be easily managed by the Court
15 and the parties.
16
17

18 46. The court may be requested to also incorporate subclasses of
19 plaintiffs, defendants, or both, in the interest of justice and judicial economy.
20

21 47. In the alternative, the class may be certified because:

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

26
27 b. the prosecution of separate actions by individual class members
28

1 would create a risk of adjudications with respect to them which
2 would, as a practical matter, be dispositive of the interests of other
3 class members not parties to the adjudications, or substantially impair
4 or impede their ability to protect their interests; and

5
6 c. defendant has acted or refused to act on grounds generally
7 applicable to the class, thereby making appropriate final and
8 injunctive relief with respect to the members of the class as a whole.
9

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

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

16 49. The California Consumer Legal Remedies Act ("CLRA") applies to
17 defendant's actions and conduct described herein because it extends to transactions
18 that are intended to result, or which have resulted, in the sale of goods to
19 consumers. Plaintiff and the members of the class are consumers who purchase
20 goods (Spore computer games) from defendant for personal, family, or household
21 purposes, and are "consumers" under Civil Code section 1761(d).
22
23

24 50. The Spore computer games that plaintiff and each of the class
25 members own are "goods" within the meaning of Civil Code section 1761(a).
26

27 51. Defendant has violated the CLRA in at least the following respects:
28

1 a. In violation of Section 1770(a)(5), defendant has represented
2 that the Spore computer game has characteristics, uses, approval, and
3 benefits it does not have;
4

5 b. In violation of Section 1770(a)(7), defendant has represented that
6 the Spore computer game is of a particular standard, quality or grade,
7 or that goods are of a particular style or model, when it is not; and
8

9 c. In violation of Section 1770(a)(14), defendant has represented that
10 the Spore computer game confers or involves rights, remedies, or
11 obligations which it does not have or involve, or which are prohibited
12 by law.
13
14

15 52. Defendant concealed material facts regarding the Spore computer
16 games from plaintiff and the members of the class, including the fact that the Spore
17 computer games contained an undisclosed, secret, separately installed, stand alone,
18 uninstallable DRM program which would install itself to the command and control
19 center of the computer and oversee function and operation on the computer,
20 preventing certain user actions, preventing certain user programs from operating,
21 or disrupting hardware operations. Had defendant disclosed such information, it
22 would have been made known to plaintiff and members of the class through the
23 marketing and advertising presented to plaintiff and members of the class by
24 defendant, retailers, resellers, the trade press, and others.
25
26
27
28

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

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

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

23 56. In accordance with Civil Code § 1780 (a), plaintiff and members of
24 the Class seek injunctive and equitable relief as to defendant's violations of the
25 CLRA; however, in accordance with Civil Code § 1782(a) & (d), plaintiff will
26 subsequently amend this Class Action Complaint to include a request for damages.
27
28

1 Plaintiff requests that this court enter such orders or judgments as may be
2 necessary to restore to any person in interest any money which may have been
3 acquired by means of such unfair business practices, and for such other relief as
4 provided in Civil Code § 1780 and the Prayer for Relief.
5

6
7 **SECOND CAUSE OF ACTION**
8 **(Violations of Unfair Competition Law, Business &**
9 **Professions Code §§ 17200, et seq.)**

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

12 58. Plaintiff brings this cause of action on behalf of herself, the class, and
13 in her capacity as a private attorney general.
14

15 59. Defendant's actions, as complained of herein, constitute unfair,
16 deceptive, and/or unlawful practices committed in violation of the Unfair
17 Competition Law, Bus. & Prof. Code §§ 17200 et seq.
18

19 60. Defendants violated the "fraudulent" prong of § 17200, the "unfair"
20 prong of § 17200, and the "unlawful" prong of § 17200 by the conduct alleged
21 herein. Defendant's acts and practices have and/or are likely to deceive members
22 of the consuming public.
23
24

25 61. All of the conduct alleged herein occurred in the course of defendant's
26 business. Defendant's wrongful conduct was part of a pattern or generalized
27 course of conduct repeated on thousands of occasions.
28

1 62. Plaintiff and members of the class suffered injury in fact and lost
2 money or property as a result of defendant's conduct because they would not have
3 purchased the Spore computer game and/or paid as much for it had they known the
4 true nature of all of the products on the gamedisk.
5

6 63. Plaintiff, on behalf of herself and each member of the class, seeks
7 individual restitution, injunctive relief, and other relief allowed under section
8 17200, et seq.
9

10
11 **THIRD CAUSE OF ACTION**
12 **(Trespass to Chattels, Nuisance and Interference**
13 **with Use of Property)**

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

16 64. Plaintiff and members of the class, at all times relevant to this action,
17 were the owners and/or possessors of computers.
18

19 65. Plaintiff and members of the class are informed and believe that,
20 beginning in September 2008, Electronic Arts, without Plaintiff's and class
21 members' consent, or in excess of any consent given, knowingly and intentionally
22 accessed Plaintiff's and class members' property, thereby intermeddling with
23 Plaintiff's and class members' right to possession of the property and causing
24 injury to Plaintiff and the members of the class.
25
26

27 66. Electronic Arts engaged in deception and concealment in order to gain
28

1 access to the computers of class members to install its SecuROM DRM Program.

2 67. Electronic Arts undertook the following actions with respect to each
3 class member's computer:
4

- 5 a. Electronic Arts accessed and obtained command control over the
6 user's computer during the installation process;
- 7 b. Electronic Arts caused the installation of a new program onto the
8 hard drive of the user's computer;
- 9 c. Electronic Arts programmed the installation to make changes and
10 additions to the registry (the command center and heart of
11 computer operations) of the user's computer.
- 12 d. Electronic Arts programmed the operation of its SecuROM
13 program to function and operate without notice or consent on the
14 part of the owner of the computer, and completely outside of the
15 control of the owner of the computer.
16
17
18
19

20 68. All these acts described above were acts in excess of any authority
21 any user granted when he or she permitted Electronic Arts entry into their
22 computers for purposes of installing the Spore computer game, since none of these
23 acts was in furtherance of installing the Spore computer game. By engaging in
24 deception and misrepresentation, whatever authority or permission users may have
25 granted to Electronic Arts for purposes of installing the Spore computer game was
26
27
28

1 vitiated.

2 69. Electronic Arts' installation and operation of its SecuROM program
3 used, interfered, and/or intermeddled with Plaintiff's and Class members' computer
4 systems. Such use, interference and/or intermeddling was without Class members'
5 consent or, in the alternative, in excess of Plaintiff's and Class members' consent.
6
7

8 70. Electronic Arts' installation and operation of its SecuROM program
9 constitutes trespass, nuisance, and an interference with Class members' chattels, to
10 wit, their computers.
11

12 71. Electronic Arts' installation and operation of its SecuROM program
13 impaired the condition and value of Class members' computers.
14

15 72. Electronic Arts' trespass to chattels, nuisance, and interference caused
16 real and substantial damage to Plaintiff and the other Class members.
17

18 73. As a direct and proximate result of Electronic Arts' trespass to
19 chattels, nuisance, interference, unauthorized access of and intermeddling with
20 Plaintiff's and Class members' property, Plaintiff and Class members have been
21 injured and impaired in the condition and value of Class members' computers, as
22 follows:
23

- 24
- 25 e. By consuming the resources of and/or degrading the performance
26 of Class members' computers (including hard drive space,
27 memory, processing cycles, and Internet connectivity);
28

- 1 f. By diminishing the use of, value, speed, capacity, and/or
- 2 capabilities of Class members computers;
- 3
- 4 g. By devaluing, interfering with, and/or diminishing Class members'
- 5 possessory interest in their computers;
- 6
- 7 h. By altering and controlling the functioning of Class members'
- 8 computers;
- 9
- 10 i. By infringing on Class members' right to exclude others from their
- 11 computers;
- 12
- 13 j. By infringing on Class members' right to determine, as owners of
- 14 their computers, which programs should be installed and operating
- 15 on their computers;
- 16
- 17 k. By tying Class members' right to utilize the Spore computer game
- 18 upon the undisclosed, uninformed, secret installation of a second
- 19 program;
- 20
- 21 l. By compromising the integrity, security, and ownership of class
- 22 members' computers because the SecuROM program can be used
- 23 by Electronic Arts or others to remotely control, reduce, or alter
- 24 the functioning of class members' computer programs, specifically
- 25 the Spore computer game; and
- 26
- 27 m. By forcing consumers to expend money, time, and resources in
- 28

1 order to effectuate the removal of the SecuROM program installed
2 on the computers of Class members without notice or consent.
3

4 74. By virtue of the Governing Law provision in Electronic Arts' EULA,
5 all class members, regardless of where they reside, regardless of where they made
6 their purchase of the Spore computer game, and regardless of physical location of
7 the computers upon which the trespass was perpetrated, are all equally and
8 identically governed by California Law as it is applied to California residents,
9 therefore a global trespass class may be certified using California law as it is
10 applied to California residents.
11
12

13 75. Plaintiff, on behalf of herself and the Class, seeks injunctive relief
14 restraining Electronic Arts from trespass to chattels, to provide an easy-to-use
15 uninstall tool for the SecuROM program, and damages.
16
17

18 **PRAYER FOR RELIEF**

19
20 WHEREFORE, plaintiff and the proposed class members request that the
21 Court enter an order or judgment against defendant including the following:
22

- 23 1. Certification of the action as a class action pursuant to Rule
24 23(b)(2) of the Federal Rules of Civil Procedure with respect to
25 plaintiff's claims for injunctive relief, and Rule 23(b)(3) of the
26 Federal Rules of Civil Procedure with respect to the claims for
27
28

1 damages, and appointment of plaintiff as class representative and her
2 counsel of record as class counsel;

3
4 2. Damages in the amount of monies paid for Spore games (for
5 purposes of clarity, Plaintiff expressly disclaims damages pursuant to
6 the CLRA at this time);

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

12
13 4. For pre-judgment and post judgment interest according to
14 proof;

15
16 5. Equitable relief in the form of restitution and/or disgorgement
17 of all unlawful or illegal profits received by defendant as a result of
18 the unfair, unlawful and/or deceptive conduct alleged in herein;

19
20 6. Other appropriate injunctive relief;

21
22 7. The costs of bringing this suit, including reasonable attorneys'
23 fees; and

24
25 8. All other relief to which plaintiff and members of the proposed
26 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 22nd day of September, 2008.



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