

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

| | |
|---|--|
| <p>I. (a) PLAINTIFFS Richard Eldridge, an individual, on behalf of himself and all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff Bradford County, Penn. (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Alan Himmelfarb, KamberEdelson, LLC 2757 Leonis Blvd., Vernon, California 90058-2304 Telephone: (323) 585-8696 ahimmelfarb@kamberedelson.com</p> | <p>DEFENDANTS Electronic Arts, Inc., a Delaware corporation, and DOES 1-75</p> <p>County of Residence of First Listed Defendant San Mateo, California (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) 4 08-4733 BZ</p> |
|---|--|

BY FAX

| | | | | | | | | | | | | | | | | | | | |
|--|---|---------------------------------------|---|---------------------------------------|---|----------------------------|----------------------------|--------------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

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|--|--|--|---|--|
| <p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> | <p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury—Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input checked="" type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> | <p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Rel. Inc. Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus—Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> | <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p> | <p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> |
|--|--|--|---|--|

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 another district (specify)

6 Multidistrict Litigation

7 Judge from Magistrate Judgment

Transferred from _____ Appeal to District _____

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:
Installation and operation of undisclosed compute program without notice, authorization or consent.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint.
JURY DEMAND: Yes No

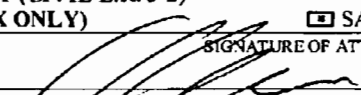
VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". Thomas v. EA, Inc., C08-04421 PVT & Gardner v. EA, Inc. C08-04629-BZ

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND SAN JOSE

DATE: October 14, 2008

SIGNATURE OF ATTORNEY OF RECORD: 

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14 Attorneys for Plaintiff Richard Eldridge

FILED
OCT 14 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BZ

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

15 RICHARD ELDRIDGE, an
16 individual, on behalf of himself and all
17 others similarly situated,

18 Plaintiff,

19 v.

20 ELECTRONIC ARTS, INC., a
21 Delaware corporation, and DOES 1-75

22 Defendants.
23
24
25
26
27
28

CASE No. **08 4733**

COMPLAINT

JURY DEMAND

BY FAX

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Richard Eldridge (“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.

12 **NATURE OF THE CLAIM**

13 1. This is a class action concerning the ***Spore Creature Creator Free***
14 ***Trial Edition*** computer game (“Spore Creature Creator Free Trial Edition”)
15 published by Electronic Arts. Despite the fact that the Spore Creature Creator Free
16
17 Trial Edition was “Free;” was downloaded from the EA website without any
18
19 charge; and could be downloaded by anyone, anywhere; Electronic Arts
20
21 nevertheless secretly installed a Digital Rights Management software program on
22
23 the computers of all persons who downloaded the Spore Creature Creator Free
24
25 Trial Edition. The inclusion of undisclosed, secretly installed DRM protection
26
27 measures with a program that was freely distributed constitutes a major violation
28
29 of computer owners’ absolute right to control what does and what does not get
30
31 loaded onto their computers, and how their computers shall be used.

32 2. The Spore Creature Creator Free Trial Edition is advertised as a demo

1 game for the PC. When consumers are invited to download the Spore Creature,
2 they are told:

3
4 “Spore Creature Creator Free Trial Edition.”
5 (or)
6 Creature Creator
7 trial version
8 Contains 25% of the body parts of complete edition

9 Users are invited to install and use the trial game on their computers.

10 3. Persons who download the game are not told is that, included in the
11 download, installation, and operation of Spore Creature Creator Free Trial Edition
12 is a second, undisclosed program. The name of the second program is SecuROM,
13 which is a form of Digital Rights Management (DRM) for computer games.

14
15 Consumers are given no notice whatsoever that the FREE trial version of the game
16 includes Digital Rights Management technology. Consumers are further not told
17 that this DRM technology consists of an entirely separate, stand-alone program
18 which will download, install, and operate on their computers, along with the Spore
19 Creature Creator Free Trial Edition download. Consumers are given no control,
20
21 rights, or options over SecuROM. The program cannot be completely uninstalled.
22
23 Once installed, it becomes a permanent part of the consumer’s software portfolio.

24
25 Even if the consumer uninstalls the Spore Creature Creator Free Trial Edition
26 game, and entirely deletes it from their computer, SecuROM remains installed and
27 operating on their computer. The only way to completely remove SecuROM, and
28

1 all aspects of its original, secret installation, is through a complete wipe of the hard
2 drive through reformatting or replacement of the drive.

3
4 4. This action is brought on behalf of a class of all U.S. computer owners
5 who have downloaded the Spore Creature Creator Free Trial Edition computer
6 game. Electronic Arts' intentionally did not disclose to any such computer owners
7 that the Spore Creature Creator Free Trial Edition game disk also possessed a
8 second, hidden program which secretly installed to the command and control
9 center of the computer (Ring 0, or the Kernel), and surreptitiously operated,
10 overseeing function and operation on the computer, preventing the computer from
11 operating under certain circumstances and/or disrupting hardware operations.
12 These actions constitute violations of the California Consumer Legal Remedies
13 Act, Civil Codes § 1750 et seq. and California's Unfair Competition Law, Business
14 & Professions Code §§ 17200, et seq., and further constitute a trespass to chattels.
15
16
17
18

19 **INTRODUCTORY ALLEGATIONS**

20
21 5. This class action arises from defendant Electronic Arts Inc.'s
22 ("Electronic Arts" or "EA" or "defendant"), engaging in deceptive and unlawful
23 conduct in designing, marketing, distributing a computer game demo that contains
24 undisclosed and unconsented to Digital Rights Management (DRM) technology.
25

26 6. Electronic Arts, Inc. (NASDAQ: ERTS) is a worldwide American
27 developer, marketer, publisher, and distributor of computer and computer games.
28

1 Established in 1982, the company was a pioneer of the early home computer games
2 industry. Originally, EA was a home computing game publisher. In the late
3
4 1980s, the company began developing games in-house and supported consoles by
5 the early 1990s. EA later grew via acquisition of several successful developers.
6
7 By the early 2000s, EA had become one of the world's largest third-party
8 publishers. In 2007, EA ranked 8th on the list of largest software companies in the
9 world. In May 2008, the company reported net annual revenue of US\$ 4.02 billion
10 in fiscal year 2008.
11

12 **The Spore Creature Creator Free Trial Edition Computer Game**

13
14 7. The demo version of the Spore Creature Creator (Free Trial Edition)
15 was released on or about June 17, 2008 as a direct download from Electronic Arts.

16
17 8. On June 17, 2008, EA released the following press release concerning
18 its Spore Creature Creator and demo:

19 *Spore Creature Creator Available Worldwide Today;*
20 *Spore Creature Creator Kicks off the Countdown to the Release of*
21 *Spore this September*

22 **DATELINE:** REDWOOD CITY, Calif.

23 Prepare to test the limits of your imagination! Maxis, an Electronic
24 Arts Inc. (NASDAQ:ERTS) studio, today released the Spore(TM)
25 Creature Creator, an introduction to the highly-anticipated and
26 groundbreaking video game, Spore(TM) which will ship worldwide
27 this September.

28 Available today for both PC and Mac, the Spore Creature Creator is a

1 stand-alone product and creativity toy box where players create their
2 own unique creatures, bring them to life with entertaining animations,
3 and share them online with friends around the world. The full version
4 of the Spore Creature Creator will be available for \$9.99 at retail
5 stores or by visiting www.spore.com. A free trial version of the Spore
6 Creature Creator is also available today at www.spore.com. The trial
7 version features 25% of the creature-making parts from Spore and lets
8 players shape, paint and play with their custom-created creatures.
9 Creatures made in the Spore Creature Creator can also be imported
10 into the full Spore game, allowing players to populate their own
11 galaxies when the game ships worldwide later this year.

12 The Spore Creature Creator lets players create their own creatures,
13 take them on a test drive, snap pictures, and make movies of them.
14 Sharing pictures or videos with friends is as easy as the click of a
15 button. Players can also share their creations with others by uploading
16 to the Sporepedia (TM) at www.Spore.com. The Sporepedia is an
17 extraordinarily vast online destination where people worldwide can
18 search for and share Spore creations, comment on other player's
19 designs, check out celebrity creature creations and much more.

20 "Today is the day we begin to see Spore come to life," said Executive
21 Producer and General Manager of Maxis, Lucy Bradshaw. "We're
22 excited to see what players will do with the powerful and intuitive
23 creativity tools we've put into the Spore Creature Creator. Our team
24 will be excitedly keeping an eye on the Sporepedia to check out
25 creations made by players from around the world."

26 The ability to upload players' creations to YouTube(TM) has also
27 been integrated into the Spore Creature Creator. Players can import
28 and upload video of their creatures' moves directly to YouTube with
only two clicks within the game. Spore will have its own YouTube
Channel where all videos of users' creations uploaded from the game
will be showcased for the YouTube community to watch, share, rate
and comment on. Check it out at <http://youtube.com/spore>.

Love your creature so much you want the entire world to see? Post it
to your blog for people to check out, even create an avatar for your
favorite social networking site. And if you want to see your creature

1 come to life in the real world - now you can! Visit
2 www.zazzle.com/sporestoreto upload your creature and turn it into a
3 custom coffee mug, t-shirt, magnet, stickers and more! Zazzle allows
4 you to instantly create cool products for your creature so you can take
your creature on the go, wherever you go!

5 Spore, the highly-anticipated game from the creators of The
6 Sims(TM), gives players their own personal universe in a box. Create
7 and evolve life, establish tribes, build civilizations, sculpt entire
8 worlds and explore a universe filled with creations made by other
9 gamers. Spore gives players a wealth of creative tools to customize
nearly every aspect of their universe: creatures, vehicles, buildings,
10 and even UFOs.

11 The Spore Creature Creator is rated E for Everyone by the ESRB. The
12 downloadable demo version is free. The complete version has an
13 MSRP of \$9.99 in North America. Spore ships for the PC, Mac,
14 Nintendo DS(TM) and mobile phones on September 5, 2008 in
15 Europe and September 7, 2008 in North America and Asia. Visit
16 www.Spore.com to download a free version of the Spore Creature
Creator, sign up for the Spore newsletter or check out all-new
screenshots and videos from the game.

17 **About Electronic Arts**

18 Electronic Arts Inc. (EA), headquartered in Redwood City,
19 California, is the world's leading interactive entertainment software
20 company. Founded in 1982, the Company develops, publishes, and
21 distributes interactive software worldwide for video game systems,
22 personal computers, cellular handsets and the Internet. Electronic Arts
23 markets its products under four brand names: EA SPORTS™, EA™,
24 EA SPORTS Freestyle™ and POGO™. In fiscal 2008, EA posted
25 GAAP net revenue of \$3.67 billion and had 27 titles that sold more
26 than one million copies. EA's homepage and online game site is
27 www.ea.com. More information about EA's products and full text of
28 press releases can be found on the Internet at <http://info.ea.com>.

9. At EA's Spore Creature Creator Free Trial Edition website, EA stated:

1 Spore Creature Creator (PC- Free Trial Edition)

- 2
- 3 • BUILD using drag-and-drop, flexible parts – is it fashion, function,
4 or fashunction?
 - 5 • PAINT with unique patterns, make your creature stand out in a
6 crowd
 - 7 • PLAY with your creature as it comes to life with dances, poses,
8 and emotions
 - 9 • SHARE using built-in snapshot and video tools—make your
10 creature a star.

11 http://eastore.ea.com/store/ea/en_US/DisplayProductDetailsPage/ThemeID.1252400&productID=101447000

12 10. The Spore Creature Creator Free Trial Edition game listed the
13 following system requirements:

14 **Creature Creator - System Requirements**

15 Spore Creature Creator requires at least the following:

16 **FOR WINDOWS XP**

- 17 * 2.0 GHz P4 processor or equivalent
- 18 * 512 MB RAM
- 19 * A 128 MB Video Card, with support for Pixel Shader 2.0
- 20 * The latest version of DirectX 9.0c
- 21 * At least 190MB of hard drive space for installation, plus additional
22 space for
23 created creatures.

24 **FOR WINDOWS VISTA**

- 25 * 2.0 GHz P4 processor or equivalent
- 26 * 768 MB RAM
- 27 * A 128 MB Video Card, with support for Pixel Shader 2.0
- 28 * At least 190MB of hard drive space for installation, plus additional
space for
created creatures.

1 **FOR MAC OS X**

- 2 * Mac OS X 10.5.3 Leopard or higher
3 * Intel Core Duo Processor
4 * 1024 MB RAM
5 * ATI X1600 or NVidia 7300 GT with 128 MB of Video RAM, or
6 Intel Integrated GMA X3100
7 * At least 260MB of hard drive space for installation, plus additional
8 space for
9 created creatures.

10 This game will not run on PowerPC (G3/G4/G5) based Mac systems
11 (PowerMac).

12 Consult the readme file for more information on using the Creature
13 Creator Trial.

14 <http://eu.spore.com/whatispore/creaturecreator.cfm>

15 11. The EA website also provided:

16 Terms & Conditions of Downloading Materials

17 The materials provided on this web site are provided "as is" without
18 warranties of any kind. Electronic Arts Inc., its subsidiaries, divisions,
19 affiliates and licensors ("EA") disclaim all warranties, either express
20 of implied, including but not limited to, warranties of merchantability
21 and fitness for a particular purpose. To the extent allowed by
22 applicable law, in no event will EA be liable for damages of any kind
23 to your hardware, peripherals or software programs as a result of your
24 download or use of our materials.

25 You may download one copy of the materials onto a single computer
26 for your personal, non-commercial, home use only, provided you keep
27 intact all copyright, trademark and other proprietary notices. No
28 materials from this web site may be copied, reproduced, modified,
republished, uploaded, posted, transmitted, broadcast or distributed in
any way without the express written consent of EA. Unauthorized use
of the materials is a violation of EA's copyright and constitutes
infringement of EA's proprietary rights.

1 Scc_trial_na.exe

2 11. At no time, in any of its advertisements, in any of its descriptions, or
3
4 in any of its terms, conditions, or system requirements, were consumers told or
5 informed that the FREE trial version of the Spore Creature Creator Free Trial
6 Edition included Digital Rights Management technology along with the download.
7

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

9 12. The Spore Creature Creator Free Trial Edition game must be installed
10 from EA's website onto a computer in order for the game to function.
11

12 13. When a user installs the Spore Creature Creator Free Trial Edition
13 game, a second program, SecuROM, is automatically and secretly installed along
14 with the Spore Creature Creator Free Trial Edition game.
15

16 14. SecuROM installs itself to the Kernel of the computer (the
17 administrative command and control center of the computer). Once installed,
18 SecuROM then allows itself to access to all parts of the computer.
19

20 12. The operating system of a computer utilizes different parts or levels of
21 the computer, determined by the need of the software for access and control over
22 different aspects of the hardware or software. These parts are commonly called
23 Ring 0, 1, 2 and 3. Ring 0 is sometimes referred to as the Kernel. The Kernel is
24 usually used by the Operating System to run the computer and it has access to
25 everything on the computer. Ring 3, which is the normal zone used by Software
26
27
28

1 has much lower permissions. SecuROM represents that it installs itself to Ring 3
2 (by having a part of itself called the UA7service.exe written to Ring 3), when in
3 fact it installs its primarily operational code to Ring 0.
4

5 13. Writing itself to the Kernel of the computer allows SecuROM to have
6 control over all other programs and processes on the computer, including
7 equipment that computer users are legally permitted and entitled to possess (e.g.,
8 two cd/dvd drives on the computer).
9

10
11 14. Like any program, SecuROM uses computer resources. It uses
12 memory, processor cycles, and program handles (leaving less for any uses the
13 owner might have had planned for their computer). To transmit information back
14 to EA, SecuROM uses the computer owner's internet connection. Whenever it
15 downloads, installs, or runs, SecuROM uses resources belonging to the computer
16 owner, which, by definition, make those resources unavailable for other tasks.
17
18 Like any program, SecuROM takes up space on the user's hard drive. Like any
19 program, SecuROM offers computer users another opportunity for something to go
20 wrong, if it fails. And, just like any other program, SecuROM does have its
21 failures.¹
22
23
24

25
26 ¹ See. E.g.: <http://forums.guru3d.com/showthread.php?t=270437>

27 A version of SecuROM installed with many recent games is responsible for crashing games
28 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

1 15. No notification of the nature, function, and operation of the SecuROM
2 program was provided to persons who downloaded the Spore Creature Creator
3 Free Trial Edition. No notice of its secret installation was provided to persons who
4 loaded and installed the Spore Creature Creator Free Trial Edition computer game.
5 No one was told that it was a separate program installing to the Kernel of the
6 computer and that it could not be uninstalled.
7

9 16. Nowhere in any of EA's websites descriptions of its Spore Creature
10 Creator Free Trial Edition game, or in its advertisements or promotions of the
11 demo, did EA disclose that the Spore Creature Creator Free Trial Edition game
12 contained a separately installed, stand alone, unremovable DRM program which
13 would install itself to the command and control center of the computer and oversee
14 function and operation on the computer, preventing certain user actions, preventing
15 certain user programs from operating, or disrupting hardware operations.
16
17

19 17. EA's EULA for Spore Creature Creator Free Trial Edition makes
20 utterly no mention of any Technical Protection Measures, DRM technology, or
21 SecuROM whatsoever.
22

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

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 privileges.
4

5 19. 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

9 Because of the way the SecuROM program is written and installed, there exist
10 simple exploits that can permit hackers and criminals to gain access or control of
11 any user's system on which SecuROM is installed. EA installed SecuROM
12 directly to the computer's Kernel. SecuROM is a vulnerable, ill-protected program
13 operating at the highest level of security on the computer. Every single computer
14 owner that has SecuROM installed on their computer is vulnerable to a third party
15 direct attack on that user's OS Kernel, permitting the complete control of every
16 aspect of that computer system by outside third parties. Simply by virtue of having
17 the program installed on their computers, EA's SecuROM program has opened a
18 major security hole directly into the most sensitive, and ordinarily, most highly
19 protected systems on a computer.
20
21
22
23
24

25 20. In addition, and also undisclosed to persons who downloaded the
26 Spore Creature Creator Free Trial Edition computer game, the SecuROM program
27 is designed to directly interfere with, and/or disable certain software functions.
28

1 Specifically, SecuROM will disable certain programs that the designers of the
2 SecuROM program believe that computer users should not own, or possess, or
3 operate on their computer, to wit:
4

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

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

22 22. In addition, and also undisclosed to persons who downloaded the
23 Spore Creature Creator Free Trial Edition computer game, the SecuROM program
24 is designed to directly interfere with, and/or disable hardware functions.
25 Specifically, SecuROM can or will disable multiple cd / dvd burners on computers.
26
27
28

1 This disabling occurs regardless of whether the Spore Creature Creator Free Trial
2 Edition game is running or not. In other words, under certain circumstances,
3 SecuROM will seek out and disable any secondary disk burning hardware on any
4 computer on which it is installed. EA, by virtue of its secret installation of
5 SecuROM, has determined that it should have control over what hardware a user
6 may have installed on their computer, and so it designated that SecuROM should
7 prohibit the operation of certain hardware regardless of whether the Spore Creature
8 Creator Free Trial Edition program is open or not.

9
10
11
12 23. Plaintiff brings this class action on behalf of a class of U. S.
13 consumers who downloaded Electronic Arts' Spore Creature Creator Free Trial
14 Edition computer game which contained an undisclosed, secret, separately
15 installed, stand alone, unremovable DRM program which would install itself to the
16 command and control center of the computer and oversee function and operation
17 on the computer, preventing certain user actions, preventing certain user programs
18 from operating, or disrupting hardware operations. Plaintiff and the proposed class
19 members would not have downloaded the Spore Creature Creator Free Trial
20 Edition computer game had they known the truth about the product.

21
22
23
24
25 24. Plaintiff seeks actual damages, individual restitution, equitable relief,
26 civil penalties, costs and expenses of litigation, including attorneys' fees, and all
27 further relief available.
28

VENUE AND JURISDICTION

1
2 25. This Court has subject matter jurisdiction over this action pursuant to
3
4 28 U.S.C. § 1332. The aggregate claims of plaintiff and the proposed class
5 members exceed, for all jurisdictional purposes, the sum or value of \$5,000,000.00.

6
7 28. Electronic Arts is a Delaware corporation headquartered in California
8 and is a citizen only of the states of California and Delaware. Plaintiff is a citizen
9 and resident of Pennsylvania, and asserts claims of behalf of a proposed class
10 whose members are scattered throughout the fifty states (including the 48 states
11 besides California and Delaware) and the U.S. territories: there is minimal
12 diversity of citizenship between proposed class members and the Defendant.
13
14

15 29. This Court also has personal jurisdiction over defendant because (a) a
16 substantial portion of the wrongdoing alleged in this complaint took place in this
17 state, (b) defendant Electronic Arts' principal place of business is located in this
18 state, and (c) defendant is authorized to do business here, has sufficient minimum
19 contacts with this state, and/or otherwise intentionally availed itself of the markets
20 in this state through the promotion, marketing, and distribution of its product in
21 this state, to render the exercise of jurisdiction by this Court permissible under
22 traditional notions of fair play and substantial justice.
23
24
25

26 30. Venue is proper in this District under 28 U.S.C. §1391(b) and (c). A
27 substantial portion of the events and conduct giving rise to the violations of law
28

1 complained of herein occurred in this District, defendant Electronic Arts Inc.'s
2 principal executive offices and headquarters are located in this District at 209
3 Redwood Shores Parkway, Redwood City, CA 94065, and defendant conducts
4 business with consumers in this District.
5

6
7 31. Jurisdiction and venue are also proper in this district because the EA
8 End User License Agreement ("EULA") contains a clause entitled "Entire
9 Agreement; Governing Law." which expressly vests jurisdiction and venue for
10 actions related to the Spore Creature Creator Free Trial Edition computer game
11 and its EULA in the state and federal courts of California and this district:
12

13
14 8. Entire Agreement; Governing Law.

15 This License constitutes the entire agreement between EA and you
16 regarding the Spore Creature Creator. This Agreement shall be
17 governed by and construed (without regard to conflicts or choice of
18 law principles) under the laws of: (i) England if you reside in a
19 Member State of the European Union; and (ii) the State of California
20 if you reside in any other jurisdiction. Unless expressly waived by
21 EA in writing for the particular instance or contrary to local law, the
22 sole and exclusive jurisdiction and venue for actions related to the
23 subject matter hereof shall be the California state and federal courts
24 having within their jurisdiction the location of EA's principal place
25 of business. You consent to the jurisdiction of such courts and agree
26 that process may be served in the manner provided herein for giving
27 of notices or otherwise as allowed by California or U.S. federal law.
28

24 **PARTIES**

25
26 32. Plaintiff Richard Eldridge (Plaintiff) is a citizen and resident of
27 Bradford County, Pennsylvania. Plaintiff downloaded a copy of the Spore
28

1 Creature Creator Free Trial Edition computer game. EA did not disclose that the
2 Spore Creature Creator Free Trial Edition computer game contained an
3 undisclosed, secret, separately installed, stand alone, unremovable 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 downloaded the computer game had he
8 known the truth about the product. Plaintiff brings this action on behalf of himself
9 and all others similarly situated.
10
11
12

13 33. 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 34. 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 occurrences alleged herein, and for the damages suffered by plaintiff.
4

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

18 **CLASS ALLEGATIONS**

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

23 All persons or entities in the United States who downloaded a Spore
24 Creature Creator Free Trial Edition computer game.
25

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

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

9
10 38. Plaintiff is a member of the class that he seeks to represent. Members
11 of the class can be identified because they will have downloaded a copy of the
12 Spore Creature Creator Free Trial Edition computer game onto their computer.
13 Class members can be notified of the class action through publication and direct
14 mailings to address lists maintained in the usual course of business by defendant.
15

16 39. **Numerosity**: Class members are so numerous that their individual
17 joinder is impracticable. It is estimated that the Class consists of tens of thousands
18 of members. The precise number of class members is unknown to plaintiff, but it
19 is clear that the number greatly exceeds the number to make joinder impossible.
20
21

22 40. **Existence and predominance of common questions**: Common
23 questions of law and fact predominate over the questions affecting only individual
24 class members. Some of the common legal and factual questions include:
25

- 26 a. Whether EA fails to disclose the presence of an additional
27 program with the Spore Creature Creator Free Trial Edition
28

1 download;

2 b. Whether EA should have separately disclosed the presence of
3 an additional DRM program with the Spore Creature Creator Free
4 Trial Edition download, and the extent and nature of that program;
5

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

11 d. Whether defendant should have disclosed, and is liable for its
12 failure to disclose, the SecuROM program, the precise details and
13 nature of the program, where and how it would install, and how it
14 would operate, prior to any installation of the program;
15

16 e. Whether defendant should have obtained informed consent
17 from the user, prior to the installation of the SecuROM program;
18

19 f. Whether defendant concealed crucial details concerning the
20 presence operation, function, and unremovability of the SecuROM
21 DRM program to the class and the public;
22

23 g. Whether defendant's actions in concealing crucial details
24 concerning the presence, operation, function, and unremovability of
25 the SecuROM DRM program were likely to deceive the public;
26
27
28

1 h. Whether defendant made representations that the Spore
2 Creature Creator Free Trial Edition computer game had
3 characteristics, uses, benefits, or qualities which it did not have;
4

5 i. Whether, by its conduct, defendant has engaged in unfair or
6 unlawful business practices with respect to the advertising, marketing,
7 and distribution of the Spore Creature Creator Free Trial Edition
8 computer game;
9

10 j. Whether, by its conduct, defendant has engaged in unfair,
11 deceptive, untrue, or misleading advertising of the Spore Creature
12 Creator Free Trial Edition computer game;
13

14 k. Whether defendant violated consumer protection statutes and/or
15 state deceptive business practices statutes;
16

17 l. Whether, by its conduct, defendant has trespassed on the
18 computers of all persons who installed the Spore Creature Creator
19 Free Trial Edition computer game;
20

21 m. Whether California law applies to all claims and claimants in
22 this action; and
23

24 n. The nature and extent of damages and other remedies to which
25 the conduct of defendant entitles the class members.
26

27 41. Defendant engaged in a common course of conduct giving rise to the
28

1 legal rights sought to be enforced by the class members. Similar or identical
2 statutory and common law violations, deceptive business practices, and omissions
3 regarding the product are involved. Individual questions, if any, pale by
4 comparison to the numerous common questions that predominate.
5

6
7 42. The injuries sustained by the class members flow, in each instance,
8 from a common nucleus of operative facts. In each case, defendant designed,
9 created, supplied, distributed, marketed, and/or offered for download the Spore
10 Creature Creator Free Trial Edition computer game containing a second,
11 undisclosed computer program.
12

13
14 43. Class members have been damaged by defendant's misconduct. Class
15 members have downloaded the Spore Creature Creator Free Trial Edition computer
16 games containing an extra, undisclosed program that secretly installed onto their
17 computers, without notice or opportunity for consent. Class members would not
18 have downloaded the Spore Creature Creator Free Trial Edition computer game
19 had they known the truth about the product.
20
21

22 44. **Typicality:** Plaintiff's claims are typical of the claims of the other
23 proposed class members. Plaintiff downloaded a Spore Creature Creator Free Trial
24 Edition computer game designed and created by defendant which contained an
25 undisclosed, secret, separately installed, stand alone, unremovable DRM program
26 which would install itself to the command and control center of the computer and
27
28

1 oversee function and operation on the computer, preventing certain user actions,
2 preventing certain user programs from operating, or disrupting hardware
3 operations.
4

5 45. **Adequacy**: Plaintiff will fairly and adequately protect the interests of
6 the class. Plaintiff is familiar with the basic facts that form the bases of the
7 proposed class members' claims. Plaintiff's interests do not conflict with the
8 interests of the other class members that he seeks to represent. Plaintiff has
9 retained counsel competent and experienced in class action litigation who will
10 prosecute this action vigorously. Plaintiff's counsel have successfully prosecuted
11 complex actions including consumer protection class actions. Plaintiff and
12 plaintiff's counsel will fairly and adequately protect the interests of the class
13 members.
14
15
16
17

18 46. **Superiority**: The class action device is superior to other available
19 means for the fair and efficient adjudication of the claims of plaintiff and the
20 proposed class members. The relief sought per individual member of the class is
21 small given the burden and expense of individual prosecution of the potentially
22 extensive litigation necessitated by the conduct of defendant. Furthermore, it
23 would be virtually impossible for the class members to seek redress on an
24 individual basis. Even if the class members themselves could afford such
25 individual litigation, the court system could not.
26
27
28

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

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

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

16 50. In the alternative, the class may be certified because:
17

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

23 b. the prosecution of separate actions by individual class members
24 would create a risk of adjudications with respect to them which
25 would, as a practical matter, be dispositive of the interests of other
26 class members not parties to the adjudications, or substantially impair
27
28

1 or impede their ability to protect their interests; and

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

6
7 **FIRST CAUSE OF ACTION**
8 **(Violations of Consumer Legal Remedies Act,**
9 **Civil Code §§ 1750, et seq.)**

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

12 52. The California Consumer Legal Remedies Act ("CLRA") applies to
13 defendant's actions and conduct described herein because it extends to transactions
14 that are intended to result, or which have resulted, in the sale of goods to
15 consumers. Plaintiff and the members of the class are consumers who seek, by
16 purchase or lease, goods or services for personal, family, or household purposes,
17 and are "consumers" under Civil Code section 1761(d).
18
19

20 53. EA's offer of download and a user's implementation and acceptaibce
21 of that download of the Creature Creator Free Trial Edition computer game
22 constitute a "Transaction" within the meaning of Civil Code section 1761(e).
23

24 54. Defendant has violated the CLRA in at least the following respects:

25 a. In violation of Section 1770(a)(14), defendant has represented that
26 the Spore Creature Creator Free Trial Edition computer game confers
27
28

1 or involves rights, remedies, or obligations which it does not have or
2 involve, or which are prohibited by law.

3
4 55. Defendant concealed material facts regarding the Spore Creature
5 Creator Free Trial Edition computer games from plaintiff and the members of the
6 class, including the fact that the Spore Creature Creator Free Trial Edition
7 computer games contained an undisclosed, secret, separately installed, stand alone,
8 unremovable DRM program which would install itself to the command and control
9 center of the computer and oversee function and operation on the computer,
10 preventing certain user actions, preventing certain user programs from operating,
11 or disrupting hardware operations. Had defendant disclosed such information, it
12 would have been made known to plaintiff and members of the class through the
13 marketing and advertising presented to plaintiff and members of the class by
14 defendant, retailers, resellers, the trade press, and others.

15
16
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18
19 56. Defendant's failure to disclose the truth about Spore Creature Creator
20 Free Trial Edition's companion DRM program, and defendant's conscious
21 concealment of that fact, are unfair, misleading, and deceptive trade practices
22 under the provisions of the CLRA, Civil Code § 1770 (a)(14).
23

24
25 57. Defendant's deceptive acts and omissions occurred in the course of a
26 transaction intended to result in a sale or lease of goods or services to consumers.
27

28 58. Plaintiff and the members of the class relied upon defendant to

1 beginning in June 2008, Electronic Arts, without Plaintiff's and class members'
2 consent, or in excess of any consent given, knowingly and intentionally accessed
3 Plaintiff's and class members' property, thereby intermeddling with Plaintiff's and
4 class members' right to possession of the property and causing injury to Plaintiff
5 and the members of the class.
6
7

8 65. Electronic Arts engaged in deception and concealment in order to gain
9 access to the computers of class members to install its SecuROM DRM Program.
10

11 66. Electronic Arts undertook the following actions with respect to each
12 class member's computer:

- 13 a. Electronic Arts accessed and obtained command control over the
14 user's computer during the installation process;
- 15 b. Electronic Arts caused the installation of a new program onto the
16 hard drive of the user's computer;
- 17 c. Electronic Arts programmed the installation to make changes and
18 additions to the registry (the command center and heart of
19 computer operations) of the user's computer.
20
- 21 d. Electronic Arts programmed the operation of its SecuROM
22 program to function and operate without notice or consent on the
23 part of the owner of the computer, and completely outside of the
24 control of the owner of the computer.
25
26
27
28

1 67. All these acts described above were acts in excess of any authority
2 any user granted when he or she permitted Electronic Arts entry into their
3 computers for purposes of installing the Spore Creature Creator Free Trial Edition
4 computer game, since none of these acts was in furtherance of installing the Spore
5 Creature Creator Free Trial Edition computer game. By engaging in deception and
6 misrepresentation, whatever authority or permission users may have granted to
7 Electronic Arts for purposes of installing the Spore Creature Creator Free Trial
8 Edition computer game was vitiated.
9

10
11
12 68. Electronic Arts' installation and operation of its SecuROM program
13 used, interfered, and/or intermeddled with Plaintiff's and Class members' computer
14 systems. Such use, interference and/or intermeddling was without Class members'
15 consent or, in the alternative, in excess of Plaintiff's and Class members' consent.
16

17
18 69. Electronic Arts' installation and operation of its SecuROM program
19 constitutes trespass, nuisance, and an interference with Class members' chattels, to
20 wit, their computers.
21

22 70. Electronic Arts' installation and operation of its SecuROM program
23 impaired the condition and value of Class members' computers.
24

25 71. Electronic Arts' trespass to chattels, nuisance, and interference caused
26 real and substantial damage to Plaintiff and the other Class members.
27

28 72. As a direct and proximate result of Electronic Arts' trespass to

1 chattels, nuisance, interference, unauthorized access of and intermeddling with
2 Plaintiff's and Class members' property, Plaintiff and Class members have been
3 injured and impaired in the condition and value of Class members' computers, as
4 follows:
5

- 6 e. By consuming the resources of and/or degrading the performance
7 of Class members' computers (including hard drive space,
8 memory, processing cycles, and Internet connectivity);
9
- 10 f. By diminishing the use of, value, speed, capacity, and/or
11 capabilities of Class members computers;
12
- 13 g. By devaluing, interfering with, and/or diminishing Class members'
14 possessory interest in their computers;
15
- 16 h. By altering and controlling the functioning of Class members'
17 computers;
18
- 19 i. By infringing on Class members' right to exclude others from their
20 computers;
21
- 22 j. By infringing on Class members' right to determine, as owners of
23 their computers, which programs should be installed and operating
24 on their computers;
25
- 26 k. By tying Class members' right to utilize the Spore Creature
27 Creator Free Trial Edition computer game upon the undisclosed,
28

1 uninformed, secret installation of a second program;

2 1. By compromising the integrity, security, and ownership of class
3 members' computers because the SecuROM program can be used
4 by Electronic Arts or others to remotely control, reduce, or alter
5 the functioning of class members' computer programs; and
6

7
8 m. By forcing consumers to expend money, time, and resources in
9 order to effectuate the removal of the SecuROM program installed
10 on the computers of Class members without notice or consent.
11

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

16 **THIRD CAUSE OF ACTION**
17 **(Violations of Unfair Competition Law, Business &**
18 **Professions Code §§ 17200, et seq.)**

19 90. Plaintiff hereby incorporates by reference the allegations contained in
20 all preceding paragraphs of this complaint.
21

22 91. Plaintiff brings this cause of action on behalf of himself, the class, and
23 in his capacity as a private attorney general.
24

25 92. Defendant's actions, as complained of herein, constitute unfair,
26 deceptive, and/or unlawful practices committed in violation of the Unfair
27 Competition Law, Bus. & Prof. Code §§ 17200 et seq.
28

1 93. Defendants violated the “fraudulent” prong of § 17200, the “unfair”
2 prong of § 17200, and the “unlawful” prong of § 17200 by the conduct alleged
3 herein. Defendant’s acts and practices have and/or are likely to deceive members
4 of the consuming public.
5

6 94. All of the conduct alleged herein occurred in the course of defendant’s
7 business. Defendant’s wrongful conduct was part of a pattern or generalized
8 course of conduct repeated on thousands of occasions.
9

10 95. Plaintiff and members of the class suffered injury in fact and lost
11 money or property as a result of defendant’s conduct because they would not have
12 downloaded the Spore Creature Creator Free Trial Edition computer game had they
13 known the true nature of all of the products in the download.
14

15 96. Plaintiff, on behalf of himself and each member of the class, seeks
16 individual restitution, injunctive relief, and other relief allowed under section
17 17200, et seq.
18

19
20 **PRAYER FOR RELIEF**

21
22 WHEREFORE, plaintiff and the proposed class members request that the
23 Court enter an order or judgment against defendant including the following:
24

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

1 Federal Rules of Civil Procedure with respect to the claims for
2 damages, and appointment of plaintiff as class representative and his
3 counsel of record as class counsel;
4

5 2. Damages in the amount of monies either paid or needed to pay
6 in order to fully and completely remove SecuROM from the
7 computers of class members (for purposes of clarity, Plaintiff
8 expressly disclaims damages pursuant to the CLRA at this time);
9

10 3. Actual damages, statutory damages, punitive or treble damages,
11 and such other relief as provided by the statutes cited herein (for
12 purposes of clarity, Plaintiff expressly disclaims damages pursuant to
13 the CLRA at this time);
14

15 4. For pre-judgment and post judgment interest according to
16 proof;
17

18 5. Equitable relief in the form of restitution and/or disgorgement
19 of all unlawful or illegal profits received by defendant as a result of
20 the unfair, unlawful and/or deceptive conduct alleged in herein;
21

22 6. Other appropriate injunctive relief;
23

24 7. The costs of bringing this suit, including reasonable attorneys'
25 fees; and
26

27 8. All other relief to which plaintiff and members of the proposed
28

1 class may be entitled at law or in equity.

2
3 **JURY TRIAL DEMAND**

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

5
6 DATED this 14th day of October, 2008.

7
8 
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