

FILED  
2011 MAR 30 P 3:45  
RICHARD W. WIEMERS  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIF.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE PAYNTER LAW FIRM PLLC  
Stuart M. Paynter (226147)  
1200 G Street N.W., Suite 800  
Washington, D.C. 20005  
Telephone: (202) 626-4486  
Facsimile: (866) 734-0622  
Email: [stuart@smplegal.com](mailto:stuart@smplegal.com)

HAGENS BERMAN SOBOL SHAPIRO LLP  
Robert B. Carey (*Pro Hac Vice pending*)  
Leonard W. Aragon (*Pro Hac Vice pending*)  
11 West Jefferson Street, Suite 1000  
Phoenix, Arizona 85003  
Telephone: (602) 840-5900  
Facsimile: (602) 840-3012  
Email: [rob@hbsslaw.com](mailto:rob@hbsslaw.com)  
[leonard@hbsslaw.com](mailto:leonard@hbsslaw.com)

Attorneys for Plaintiff Robin Antonick **E-filing**

[Additional Counsel Listed on Signature Page]

**EDL**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBIN ANTONICK, an Illinois Citizen,  
  
Plaintiff,

**CV 11**

Case No.

**1543**

v.

**COMPLAINT**

**\*\*\*REDACTED\*\*\***

ELECTRONIC ARTS INC., a California  
corporation,

**DEMAND FOR JURY TRIAL**

Defendant.

**FAXED**

1 Plaintiff, by and through his attorneys, based on his individual experiences, the  
2 investigation of counsel, and upon information and belief alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff Robin Antonick developed the first version of Electronic Arts' now-famous  
5 Madden NFL Football videogame for the Commodore 64, MS DOS and Apple II platforms. The  
6 first version of Madden was widely recognized as ground-breaking. At the time, it was widely  
7 thought impossible to successfully simulate an actual football game with eleven players on the field  
8 for each team due to the processing power limitations of then current hardware. Not only did  
9 Antonick develop the first commercially successful football game to simulate 11x11 football, he  
10 did it with a degree of realism that was wholly unprecedented. Antonick's ground-breaking  
11 software was made possible by his programming skill and creativity combined with a practical  
12 understanding of the game derived from a life of playing football, including time at the collegiate  
13 level.

14 2. Antonick developed the first Madden videogame pursuant to a series of  
15 development contracts with Electronic Arts which culminated in a contract executed in 1986 (the  
16 "1986 Contract"). This 1986 Contract has never been terminated and remains in force to this day.  
17 It requires Electronic Arts to pay Antonick royalties on not only the versions of the Madden game  
18 developed by him but also any derivative works and any works "derived" from derivative works.  
19 There can be little factual dispute that Antonick was the developer of the first Madden game  
20 released in 1988 and is listed on the game as such.

21 3. For decades, Electronic Arts has avoided paying these royalties by affirmatively and  
22 fraudulently misrepresenting to Antonick the derivation of the current generation of Madden  
23 football games. Only recently, as a result of publicity surrounding the 20<sup>th</sup> Anniversary of the  
24 Madden videogame, did Antonick become aware that Electronic Arts did not independently  
25 develop subsequent versions of its Madden NFL software. Instead, according to recent statements  
26 by Electronic Arts founder Trip Hawkins, the current generation of software apparently was  
27 derived from software developed by Antonick. In fact, as the result of extensive interviews and  
28 research triggered by Hawkins' admission, Antonick learned that the lead executive at Electronic

1 Arts in charge of interacting with him and who had intimate knowledge of his code then turned  
2 around and spent “countless hours” working on Electronic Arts’ supposedly “independently”  
3 developed versions of the code.

4 4. As a result of Electronic Arts’ fraudulent behavior, Antonick has been unlawfully  
5 deprived of tens of millions of dollars in royalty payments owed under the 1986 Contract and has  
6 been deprived of the right to collect even more royalties going forward. Antonick brings this  
7 action to recover royalty payments owed now and in the future.

8 5. In addition, because Electronic Arts intentionally defrauded Antonick of his  
9 contractual rights and valuable intellectual property, Antonick requests that Electronic Arts be  
10 required to pay an amount equal to the profits that it has earned as the result of its fraudulent  
11 behavior and pay punitive damages.

## 12 II. PARTIES

13 6. Plaintiff Robin Antonick, an individual, is an Illinois resident. A successful college  
14 football player himself, Antonick has always had a passion for football. With the advent of modern  
15 computing, Antonick combined his passion for football with a talent for programming by designing  
16 a football videogame prototype that ultimately became the Madden NFL videogame. Antonick has  
17 had a successful career in the technology industry including most recently holding the position of  
18 Chief Web Officer and Chief Online Marketing Officer at The Christian Science Monitor.  
19 Antonick recently received a Masters in Management from Harvard University.

20 7. Defendant Electronic Arts Inc., a Delaware corporation, is a multi-billion dollar  
21 interactive entertainment software company that produces the Madden NFL videogame franchise.  
22 It describes itself as the “world’s leading interactive entertainment software company.” Electronic  
23 Arts’ principal place of business is Redwood City, California.

24 8. As of 2010, Electronic Arts has sold more than 85 million copies of Madden  
25 Football for over \$4 billion in sales.

## 26 III. JURISDICTION AND VENUE

27 9. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332  
28 because the amount in controversy exceeds \$75,000 and the parties are citizens of different states.



1 the outcome of various plays was determined by static rules. As a result, gameplay rapidly became  
2 boring and predictable for experienced players.

3 15. Against this backdrop, Antonick approached Electronic Arts founder and CEO Trip  
4 Hawkins in 1983 with astonishing news: he had developed a working prototype 11x11 football  
5 videogame for the Apple II computer. Moreover, not only did the software use eleven players per  
6 team, but in addition, Antonick utterly revolutionized gameplay by utilizing sophisticated models  
7 of player behavior in place of static rules-based gameplay. The use of these player models resulted  
8 in gameplay that was adaptive and less predictable, which in turn vastly improved the gaming  
9 experience.

10 16. Given the groundbreaking nature of Antonick's work, Electronic Arts immediately  
11 signed him to a development contract (the "1983 Contract") pursuant to which Antonick agreed to  
12 develop a commercial version of his software. In particular, he agreed to develop "a simulation of  
13 professional football as played in the N.F.L." To achieve "realism," the contract specified that the  
14 "main display screen will display two full eleven (11) man football teams" and that "all rules of  
15 N.F.L. football will be recreated."

16 17. In addition to paying Antonick for the additional development work necessary to  
17 transform the game into a commercial version that realistically replicated an NFL game, Electronic  
18 Arts agreed to pay Antonick royalties on each sale. Specifically, Electronic Arts agreed to pay him  
19 a royalty of 15% on any works he developed and 5% on any works developed by Electronic Arts  
20 that derived from his works. 1983 Contract, § V.

21 18. Following the signing of the 1983 Contract, Antonick immediately began  
22 developing a commercial version of the software. During the period 1983-1986 superseding  
23 contracts and amendments were signed as Electronic Arts insisted on the addition of new or revised  
24 features.

25 19. During this period, Electronic Arts signed a deal with John Madden to utilize his  
26 name and likeness in the game. More than simply a branding deal, it required extensive technical  
27 integration of John Madden into the game itself. Specifically, Antonick translated Madden's  
28 playbook and play calling into computer algorithms and integrated them into the program,

1 including but not limited to, a feature called "Ask Madden" that permitted a user to essentially call  
2 on John Madden's playbook and Madden's situational play calling expertise for the execution of  
3 plays.

4 20. Antonick's translation of Madden's plays and expertise Antonick derived from  
5 analyzing Madden's behavior as an NFL coach into computer code was extraordinarily valuable  
6 intellectual property and required literally hundreds of hours of work. In addition, it required a  
7 skilled programmer with extensive knowledge of real-life football, a rare combination of skills that  
8 only Antonick possessed. Antonick's intimate knowledge of football derived from his career as a  
9 successful college athlete as well as his experiences with several close relatives members who  
10 played professionally in the NFL.

11 21. During this period, Electronic Arts founder Trip Hawkins and other Electronic Arts'  
12 employees had extensive and unfettered access to Antonick's source code, design documents and  
13 other intellectual property.

14 **B. The 1986 Contract**

15 22. In 1986 the parties negotiated a new contract. The new contract ("1986 Contract")  
16 remained limited to the "simulation of professional football." The main change from the 1983  
17 Contract was that the parties mutually agreed to lower the relatively high royalty schedule in the  
18 1983 Contract. Antonick agreed to this modification in part because Electronic Arts represented to  
19 him that they were incurring higher costs as a result of its license with John Madden. Primarily  
20 though, Antonick agreed to this modification because Electronic Arts informed him that it  
21 anticipated the product to be a long-term commercial success. Electronic Arts assured him,  
22 however, that he would remain the principal architect of the Madden product, his intellectual  
23 property would remain foundational and that he would receive royalties on all works derived from  
24 his work. In short, Antonick gave up high royalty rates for a promise that he would receive lower  
25 royalties over a longer period of time for a product that both parties believed would be  
26 commercially very successful over the long-term. Specifically, the royalty rate for works Antonick  
27 developed was slashed by more than half to 7% and the royalty on "derivative works" developed  
28 by Electronic Arts dropped eighty percent from 5% to 1%.

1           23.     The 1986 Contract defines a derivative work as “any computer software program or  
2 electronic game which either (a) constitutes a derivative work within the meaning of United States  
3 copyright law or (b) produces audiovisual effects which infringe the copyright in the audiovisual  
4 effects produced by the derivative Work.” It expressly notes that the term includes “significant  
5 enhancements of the Work to add additional features or improve performance and adaptations of  
6 the Work to operate on computers or operating systems other than those described in the  
7 Specifications.”

8           24.     The 1986 Contract also created a new royalty category termed “Remote Derivative  
9 Work.” A subset of derivative works, a remote derivative work is defined as “a Derivative Work  
10 by [Electronic Arts] derived directly from another Derivative Work by [Electronic Arts] that runs  
11 on a Microprocessor Family different from that of the Work.” The royalty rate on remote  
12 derivative works is defined as half of the royalty provided for Derivative Works. Because the  
13 royalty for Derivative Works was originally set at one percent, this meant that the original royalty  
14 for Remote Derivative Works was half of one percent.

15           25.     The creation of this new category of remote derivative work with its dramatically  
16 lower royalty rate confirms the express language in the preamble that both parties contemplated a  
17 “long-term relationship” during which Antonick would receive royalties during the entire lifespan  
18 of the Madden franchise unless and until Electronic Arts developed its own version wholly without  
19 any reference whatsoever to Antonick’s intellectual property.

20           26.     In addition to providing Antonick with royalties, the 1986 Contract contains certain  
21 notification provisions. *First*, it obligates Electronic Arts to place a copyright notice crediting  
22 Antonick on all works he developed as well as any derivative works, including remote derivative  
23 works. *Second*, any time Electronic Arts desires to develop a derivative work, the 1986 Contract  
24 obligates Electronic Arts to provide Antonick with “written notification” and an “opportunity to  
25 develop” the derivative work.

26           27.     Pursuant to the 1986 Contract, Antonick continued development work on the  
27 Madden software. The first version of the software was released in 1988 for the Apple II computer  
28

1 and 1989 on the Commodore 64 and IBM PC, which were the only versions of Madden branded  
2 football at that time.

3 28. During this period, Electronic Arts founder Trip Hawkins and Electronic Arts  
4 developers, including most notably Electronic Arts employees Richard Hilleman and Bing Gordon  
5 had extensive access to and thorough knowledge of Antonick's code, design documents and other  
6 intellectual property.

7 29. Hilleman in particular worked closely with Antonick for several years. By 1988,  
8 Hilleman had become Trip Hawkins' right hand man on Madden development assuming functions  
9 from Hawkins as Electronic Arts' lead producer on Antonick's Madden effort, which included a  
10 contractually mandated relocation of Antonick's team to Electronic Arts' offices in San Francisco.

11 30. Hilleman's cubicle was located only a few feet from the space Electronic Arts  
12 provided and required Antonick and his team to occupy specifically for the purpose of finishing the  
13 original Madden product. Electronic Arts obligated Antonick to work hand in hand with Hilleman  
14 and his team. Hilleman's effort was intense, deep, and constant with extended hours focused on  
15 understanding Antonick's approach, designs, code and all his intellectual property.

16 31. During this time it was common to have design whiteboard and detailed source code  
17 review sessions of Antonick's intellectual property with Hilleman and his team after they used the  
18 product and developed questions. This relationship would continue through the end of Antonick's  
19 relationship with EA in 1992.

20 **C. The Sega Amendment**

21 32. After the release of Madden for the Apple II platform, Electronic Arts immediately  
22 began versions for other platforms. Most notably, Antonick was retained to do extensive work on  
23 the Commodore 64, Sega, PC, and Nintendo platforms. With respect to the Sega and Nintendo  
24 platforms, an October 1989 amendment increased the royalty rate to 3% for derivative works.

25 33. The parties did not modify the provision in the 1986 Contract that calculated the  
26 royalty of remote derivative works as half the royalty for remote works. Consequently, following  
27 the Sega Amendment, the royalty for remote derivative works increased to 1.5%.

28



1           **D. Antonick's Intellectual Property Is The Foundation Of The Madden Franchise**

2           34. The Madden software developed by Antonick pursuant to the development  
3 agreements outlined above was truly revolutionary. Football games of the day were generally  
4 statistics based. In other words, the play selection determined the result of the play via statistical  
5 analysis, which was then animated on a 2D visual surface. Antonick developed a new  
6 revolutionary approach. Rather than relying on statistics, Antonick used complex algorithms to  
7 model the behavior of actual NFL players one player at a time using a complex system of player  
8 ratings. Play and game results were determined not through easily controlled statistical  
9 comparisons but through a complex modeling of human behavior and physics within the context of  
10 then-existing NFL rules. Antonick was uniquely able to provide this approach because not only  
11 was he a skilled programmer but he had also played college football and had close relatives who  
12 were actual NFL players. Nobody else at Electronic Arts had this unique background.

13           35. On information and belief, Antonick's highly confidential and highly proprietary  
14 methods of simulating actual NFL player behavior were incorporated by Electronic Arts into  
15 subsequent versions of Madden NFL produced by Electronic Arts. Electronic Arts has paid  
16 Antonick no royalties on these subsequent versions. Antonick's methodologies are highly  
17 complex, required advance programming and required years of constant refinement to develop.

18           36. Antonick's approach to simulating defensive players' interceptions of a ball carrier  
19 represents an example of the type of player modeling that was developed by Antonick and, on  
20 information and belief, copied by Electronic Arts in subsequent versions of its Madden videogame.  
21 Typical football simulations simply calculated the last position of the ball carrier and sent  
22 defensive players towards that last position. This approach did not achieve the realism that  
23 Electronic Arts and Antonick desired and which is to this day the hallmark of Electronic Arts'  
24 Madden game.

25           37. [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

45. In addition to the complex algorithms by which Antonick simulated actual player behavior, other aspects of Antonick's approach were equally revolutionary.

1           46. For example, prior games presented the user with a two-dimensional visual field.  
2 Resolving logical issues in three dimensions was simply too complex for the computing power of  
3 the day because it would require a 360 degree compass and a fully integrated Z coordinate.

4           47. Antonick solved this issue in a unique and revolutionary manner. [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] Thus, Antonick's code allowed users to experience the game in three  
12 dimensions even though the processing power of the day was woefully inadequate to truly operate  
13 in such an environment.

14           48. On information and belief Electronic Arts utilized Antonick's 3D technologies in  
15 subsequent versions of Madden NFL in violation of Antonick's contractual and intellectual  
16 property rights.

17           49. Some of Antonick's valuable intellectual property never made it into the released  
18 version of Madden but was intended by the parties to be utilized in subsequent versions, for  
19 research and development purposes or debugging or both.

20           [REDACTED] For example, Antonick developed and presented to Electronic Arts several ways to  
21 implement an instant replay feature. [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

53. On information and belief, Electronic Arts utilized Antonick's instant replay technologies in subsequent versions of Madden NFL in violation of Antonick's contractual and intellectual property rights.

54. Antonick supplied other instant replay features that were not incorporated into the original Madden releases. [REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

[REDACTED] These features were highly confidential intellectual property and required advance programming skills to develop.

55. On information and belief Electronic Arts utilized the above instant replay features in subsequent versions of Madden NFL in violation of Antonick’s contractual and intellectual property rights.

[REDACTED] Another example of Antonick’s groundbreaking intellectual property was his development of an independent camera that could be positioned in a 3D space. Antonick developed code that allowed the user [REDACTED]

[REDACTED]

1           57.     On information and belief, Electronic Arts utilized Antonick's 3D camera  
2 technologies in subsequent versions of Madden NFL in violation of Antonick's contractual and  
3 intellectual property rights.

4           58.     During the entire period described above, Trip Hawkins, Bing Gordon, Richard  
5 Hilleman and other Electronic Arts employees had extensive access to and knowledge of  
6 Antonick's code, design documents and other intellectual property, including that outlined above.  
7 Richard Hilleman in particular spent hundreds of hours playing and reviewing Antonick's code and  
8 other intellectual property and had intimate knowledge of the complex solutions developed by  
9 Antonick to model NFL behavior and physics.

10           **E.     EA's Assurances That It Would Safeguard Antonick's Intellectual Property**

11           59.     Antonick's contracts with EA had strict confidentiality provisions. Specifically, EA  
12 agreed "to hold in confidence all Confidential Information" of Antonick and "use at least the same  
13 degree of care that it uses to protect its own Confidential Information . . . ." Confidential  
14 Information was defined as "the source code developed by" Antonick, any development aides and  
15 any other information designated by Antonick as Confidential.

16           60.     Consistent with the contractual provisions, during the entire period in which  
17 Antonick was engaged in development work, Electronic Arts repeatedly assured Antonick that it  
18 would safeguard his intellectual property.

19           61.     Industry standard practice when a company wishes to develop its own version of  
20 previously licensed software is to ensure that the subsequent development occurs in a "clean room"  
21 development environment. A "clean room" is a development environment in which the relevant  
22 designers, developers, and programmers have no access to or knowledge of the prior intellectual  
23 property they are attempting to replicate. Generally, the safest and most efficient approach is to  
24 hire third party contractors, who have not had access to the prior intellectual property and are not  
25 given such access.

26           62.     Electronic Arts told Antonick and other developers that if it terminated a  
27 development contract but wanted to keep producing software with similar functionality, it would  
28 ensure that it developed such software in a "clean room" development environment.

1           63.     Electronic Arts went so far as to give its independent programmers and developers  
2 including Antonick extensive seminars on the “clean room” development methodology as part of  
3 conferences known as Artists Symposiums that it organized for its independent programmers and  
4 developers Electronic Arts had under contract. The presentations on independent development  
5 methodology were conducted by Electronic Arts’ internal tools team in conjunction with in-house  
6 and outside counsel who represented Electronic Arts. Counsel for Electronic Arts would update  
7 the assembled programmers on the latest developments in intellectual property law as it related to  
8 infringement whether intentional or unintentional. Antonick explicitly remembers Electronic Arts’  
9 counsel telling the assembled programmers at one such Symposium that even short casual  
10 conversations in the lunch room could result in potential claims being brought and programmers  
11 were cautioned to consult with EA’s legal team before integrating any suggestions by consumers or  
12 other third parties into their development work as doing so could result in intellectual property  
13 claims.

14           64.     EA also professed to have used a clean room methodology itself in reverse  
15 engineering Nintendo’s development tools that they required Antonick to use.

16           65.     Thus, Antonick reasonably believed, and was specifically told by EA, that if EA  
17 sought to duplicate the functionality of his software it would, consistent with what it preached, not  
18 utilize any of his intellectual property and not allow individuals who had access to his intellectual  
19 property to work on a technical level on subsequent versions of Madden.

#### 20           **V.     ELECTRONIC ARTS’ FRAUDULENT FAILURE TO PAY ROYALTIES**

21           66.     At some point in 1990, Electronic Arts realized that the Madden videogame  
22 represented software that could be easily franchised. Because of its reliance on actual NFL rosters,  
23 unlike most videogames, Madden could be sold, with minimal enhancements, on an annual basis  
24 thereby reaping enormous profits to Electronic Arts every year.

25           67.     Unknown to Antonick, Electronic Arts decided that it did not want to share these  
26 profits with him even though he was responsible for the development of virtually all the ground-  
27 breaking technology at the heart of the game and even though Electronic Arts had committed to a  
28 long term relationship in which it would pay him royalties over the entire life of the franchise.



1           68.     Without informing Antonick or providing him with his contractual first right of  
2 refusal for development work, Electronic Arts quietly hired the development company Park Place  
3 Productions to rush to market a Sega version of Madden for the new Sega Genesis platform.

4           69.     In the summer of 1990, Antonick first became aware of the existence of the Park  
5 Place development team. On August 28, 1990, Plaintiff had a call with EA employee Richard  
6 Hilleman. EA employee Bing Gordon, upon information and belief, was also on the call.

7           70.     During the call, Richard Hilleman informed Plaintiff that the reason he had not been  
8 given his contractual first right of refusal was that the Sega version was going to be more of an  
9 “arcade” game and that it was being developed without any reference or use of his intellectual  
10 property. Indeed, Hilleman assured Plaintiff repeatedly during this conversation that none of his  
11 intellectual property was being used. Plaintiff reasonably relied on these statements, and therefore  
12 did not attempt to enforce his contractual rights or otherwise protect his intellectual property.

13 Further, Robin continued to fulfill his contractual obligations by contributing intellectual property  
14 to Electronic Arts. Unbeknownst to Antonick, Electronic Arts was deliberately utilizing his  
15 intellectual property in developing the Sega version with Park Place Productions and in developing  
16 subsequent versions. Electronic Arts made zero effort to establish a clean room development  
17 environment and its assurances to the contrary were false and known to Electronic Arts to be false.

18           71.     Unbeknownst to Antonick, Electronic Arts’ employees who had possessed and  
19 continued to possess unfettered access to his code and intellectual property, including but not  
20 limited to Richard Hilleman, Trip Hawkins and Bing Gordon, continued working on subsequent  
21 versions of Madden. Richard Hilleman recently acknowledged in a declaration dated November  
22 17, 2009 that he “oversaw the development of the *John Madden Football* series from 1988 to  
23 1993/94.”

24           72.     Richard Hilleman remains at Electronic Arts as its Chief Creative Officer. On  
25 information and belief, he continues to be involved in the production of Electronic Arts’ Madden  
26 software.

27           73.     The founder of Park Place Productions has stated on his website that Richard  
28 Hilleman spent “countless hours” assisting Park Place Madden development. Among other things,

1 Richard Hilleman provided Park Place with technical pointers, technical solutions and even worked  
2 directly on Park Place code. Given Richard Hilleman's extensive knowledge of Antonick's code, it  
3 would not be possible for Hilleman to spend "countless hours" working on subsequent versions of  
4 Madden without benefiting from and in fact utilizing Antonick's ground-breaking prior  
5 development work.

6 74. Significantly, the founder of Park Place Productions stated in a November 24, 2009  
7 interview that Park Place was not even aware that the game produced would be an NFL game until  
8 shortly before release and that player ratings were completely supplied by Electronic Arts. Thus,  
9 the incorporation of player ratings among other NFL related elements necessarily derived from  
10 Antonick's prior work.

11 75. Most shocking of all, the founder of Park Place Productions stated in the same  
12 interview that he only met with John Madden on a single occasion at a promotion event. He  
13 affirmed that he never possessed Madden's playbook, never integrated Madden in the game and  
14 never developed any algorithms based on Madden's playbook. Thus, John Madden's extensive  
15 integration into the Madden franchise derives from Antonick's work, which translated his plays  
16 into sophisticated computer algorithms. Prior to the November 24, 2009, interview Antonick was  
17 not aware of this fact.

18 76. The Sega version of Madden produced by Park Place was produced in a record "six  
19 months." The sole assigned programmer Jim Simmons has stated under oath that he was the "only  
20 programmer/developer on the [Madden] project." Mr. Simmons had never developed a  
21 professional football game before and in fact had never even developed a commercial software  
22 production. Additionally, he had no football experience.

23 77. It would not be possible for Simmons to complete development in a record six  
24 months, particularly given his inexperience, without the substantial input of Electronic Arts and the  
25 intellectual property of Antonick. This is not speculation. In the November 24, 2009 interview,  
26 Park Place founder stated that "Hilleman came down to our office and lived there for well over a  
27 month with Simmons turning something that looked good into something that actually played great  
28 football." Once again, it was impossible for EA to have created Madden football in a clean room

1 development environment without access to and benefitting from Antonick's work product when  
2 the developers barely knew that they were creating an NFL football videogame.

3 78. Having already misappropriated Antonick's intellectual property, EA attempted to  
4 induce Antonick to give up his contractual rights. In furtherance of its scheme, Electronic Arts  
5 employee Bing Gordon called Antonick and told him that in light of potential legal issues with  
6 Nintendo arising out of Electronic Arts' reverse engineering of Nintendo's development tools, it  
7 would be necessary to terminate certain contractual rights for "legal reasons." Trusting Electronic  
8 Arts and not questioning that such termination was necessary for legal reasons, Antonick signed an  
9 amendment entitled a "Termination Amendment" in June 1991.

10 79. Gordon's statements to Antonick were false and known to Electronic Arts to be  
11 false. Had Antonick known that Electronic Arts was, in fact, stealing his technology, Antonick  
12 would have taken immediate steps to protect his contractual and intellectual property rights.  
13 Antonick, however, had no reason to believe that Electronic Arts' statements were false or that it  
14 had misappropriated his intellectual property or breached its contractual obligations. Antonick  
15 believed, and had no reason to believe otherwise, that the Sega version was developed  
16 independently and without reference to his intellectual property as Electronic Arts informed him.

17 80. The 1991 Termination Amendment terminated Antonick's contractual rights "solely  
18 with respect" to the John Madden football "software program" for the "Nintendo Entertainment  
19 System."

20 81. The Termination Amendment expressly states that all other provisions of the 1986  
21 Contract remained in "full force and effect." Thus, with respect to all other platforms, the 1986  
22 Agreement remained in force and remains in force to this day.

23 82. Through the Termination Amendment, Electronic Arts reiterated and incorporated  
24 by reference its assurances in the 1986 Contract that it would protect Antonick's intellectual  
25 property. At the time of the execution of the 1991 Termination Amendment, those assurances were  
26 false and known to Electronic Arts to be false. Had Electronic Arts informed Antonick of the truth,  
27 Antonick would have taken steps to protect his intellectual property and to collect the royalties to  
28

1 which he was entitled. Instead, Antonick relied on Electronic Arts' false statements by failing to  
2 enforce his contractual rights to royalties on the Madden software.

3 83. Electronic Arts additionally intentionally and falsely represented to Antonick that  
4 his intellectual property was not utilized in its Madden software by failing to place a copyright  
5 notice crediting Antonick on the packaging of any version of Madden released after 1991 as  
6 required by the 1986 Contract. Again, Antonick relied on EA's false statements by failing to  
7 enforce his contractual rights and failing to take steps to protect his intellectual property.

8 84. In an additional measure to conceal its unlawful conduct and contractual breaches,  
9 Electronic Arts provided Antonick with regular quarterly royalty statements which affirmatively  
10 and falsely represented that it owed him no royalties on software released after 1991. Electronic  
11 Arts provided Antonick with these fraudulent royalty statements for many years following the  
12 termination of its relationship with Antonick. Antonick relied on these false and fraudulent royalty  
13 statements by failing to enforce his contractual rights and failing to take steps to protect his  
14 intellectual property

15 85. Antonick received his last royalty payment in approximately 1992.

## 16 **VI. CONTINUING ROYALTY DOCTRINE AND THE TOLLING OF THE** 17 **STATUTE OF LIMITATIONS**

18 86. California has adopted the continuing royalty doctrine pursuant to which a cause of  
19 action accrues each time royalties are due. Under the relevant contractual provisions, Antonick is  
20 entitled to royalties each quarter. Therefore, a new cause of action accrues quarterly and  
21 Antonick's claims are not barred by the statute of limitations.

22 87. Moreover, the statute of limitations has been tolled because Electronic Arts  
23 fraudulently concealed its misappropriation of Antonick's intellectual property and contractual  
24 breaches. Specifically, as discussed above, Electronic Arts employee Richard Hilleman  
25 affirmatively represented to Antonick that it had developed the Sega version of Madden  
26 independently and without the use of or reference to his intellectual property. These assertions  
27 were false and known to EA to be false. In addition, in connection with the 1991 Termination  
28 Amendment, EA expressly and affirmatively represented that it would protect Antonick's

1 intellectual property. These assertions were false and known to be false. In fact, EA was already  
2 misappropriating Antonick's intellectual property.

3 88. Electronic Arts further concealed its fraud, misappropriation and contractual  
4 breaches by failing to give Antonick "written notice and the opportunity to develop" derivative  
5 works as would be required under the 1986 Contract if Electronic Arts were utilizing his  
6 intellectual property in whole or in part. By failing to give this notice, Electronic Arts'  
7 intentionally and falsely represented that subsequent versions of Madden were not subject to  
8 royalty payments.

9 89. Electronic Arts further concealed its fraud, misappropriation and contractual  
10 breaches by sending Antonick royalty statements that were false and misleading because they  
11 failed to list the Sega version of Madden and subsequent versions of Madden as derivative works,  
12 even though EA had an affirmative duty to do so.

13 90. Electronic Arts further concealed its fraud, misappropriation and contractual  
14 breaches by failing to put copyright notices on the Sega version and subsequent versions of  
15 Madden crediting Antonick despite affirmative contractual duties to do so.

16 91. Antonick relied on all Electronic Arts' false and fraudulent statements above.  
17 Specifically, in reliance on these statements, Antonick did not enforce his contractual and  
18 intellectual property rights until this action.

19 92. Given Electronic Arts' express misrepresentations, Antonick had no reason to  
20 believe Electronic Arts owed him royalties. Only with the extensive publicity surrounding  
21 Electronic Arts' Madden NFL "20th Anniversary" celebrations did Antonick become aware that  
22 Electronic Arts had continued to create derivative works from his work and considered its current  
23 software to have derived from Antonick's intellectual property. Specifically, in its publicity  
24 materials surrounding the 20<sup>th</sup> Anniversary Electronic Arts, to Antonick's surprise traced its current  
25 software back to his software *not* the version developed by Park Place.

26 93. Similarly, in numerous recent interviews given to celebrate the 20<sup>th</sup> Anniversary of  
27 Madden, Electronic Arts founder Trip Hawkins expressly traces the origin of the Madden software  
28 to the 1988 version developed by Antonick and repeatedly observes that this version—as opposed

1 to subsequent versions—took “four years” to make because many complex programming issues  
2 were first solved in that version. When an acquaintance told Antonick about the Hawkins  
3 interview broadcast on CNBC on July 10, 2009 it was the first time that Antonick would have been  
4 put on notice that Electronic Arts might have misappropriated his intellectual property and  
5 breached its contractual obligations.

6 94. Shocked that Electronic Arts had not developed subsequent versions of the Madden  
7 software independently and in fact was now tracing them all back to *his* software, Antonick  
8 contacted Electronic Arts in 2009. Electronic Arts quickly entered into a tolling agreement  
9 effective September 8, 2009.

10 95. Despite extensive negotiations between Antonick and high-ranking Electronic Arts  
11 executive, which included an exchange of early source code, Antonick and Electronic Arts were  
12 unable to resolve their dispute.

13 96. The parties agreed that all communications made between Antonick and Electronic  
14 Arts during these settlement negotiations would be completely confidential. The parties  
15 additionally agreed, subject to a few express exceptions, that the source code analysis would  
16 remain confidential as well and the analysis could not be discussed by Antonick in his complaint.

17 97. Plaintiff reserves the right to amend his complaint to add additional claims once  
18 Plaintiff receives sufficient source code from Electronic Arts during discovery in this matter.

19 98. Electronic Arts terminated the tolling agreement as of January 21, 2011.

## 20 **VII. WIDESPREAD USE OF ANTONICK’S INTELLECTUAL PROPERTY**

21 99. Electronic Arts’ Sega version of Madden was derived from Antonick’s works.

22 100. Every version of Electronic Arts’ Madden software is derived from prior versions  
23 within the meaning of the 1986 Contract.

24 101. Every version of Electronic Arts’ Madden software is thus a “remote derivative  
25 work” within the meaning of the 1986 Contract.

26 102. Electronic Arts’ use of Antonick’s intellectual property likely extends far beyond  
27 the Madden franchise.

28

1           103. On information and belief, Electronic Arts' Bill Walsh College Football and NCAA  
2 Football franchises are derived from its Madden software and are therefore "remote derivative  
3 works" within the meaning of the 1986 Contract.

4           104. In connection with the 20<sup>th</sup> Anniversary celebrations of Madden, Trip Hawkins  
5 publicly admitted that Electronic Arts had used Antonick's "engine" in its hockey game.  
6 Consistent with this, Electronic Arts provided Plaintiff with a declaration from founder Trip  
7 Hawkins stating that the Sega version "was used to develop future versions in the (Madden)  
8 franchise and EA's hockey game."

9           105. On information and belief, Electronic Arts' hockey game is therefore a "remote  
10 derivative work" within the meaning of the 1986 Contract.

11           106. On information and belief, other sports titles produced by Electronic Arts may  
12 utilize the intellectual property of Antonick and therefore constitute remote derivative works within  
13 the meaning of the 1986 Contract.

#### 14           **VIII. PATTERN OF INTELLECTUAL PROPERTY MISAPPROPRIATION**

15           107. Electronic Arts' cavalier treatment of Antonick's intellectual property and  
16 contractual rights is symptomatic of a corporate culture that has long taken a "so sue me" approach  
17 to the use of third party intellectual property that it does not own and generally devalues the  
18 importance of intellectual property. Antonick vividly recalls attending an EA function at which  
19 Larry Probst, the current chairman of EA, told the assembled programmers: "I could sell sh\*t in a  
20 box. I do it every day."

21           108. Symptomatic of this culture, soon after hiring Park Place Productions to assist with  
22 the production of the Madden game, Electronic Arts simply hired Park Place's lead developer and  
23 used him to develop subsequent versions of Madden, NCAA, and hockey without the involvement  
24 of Park Place. On information and belief, Electronic Arts was forced to settle with Park Place for a  
25 substantial sum.

26           109. Nothing has changed in the intervening years. For example, in a situation eerily  
27 familiar to Antonick, in the late 1990s, Electronic Arts published the Motocross cycling game  
28 made by the French software company Delphine Software. Pursuant to its agreement with

1 Delphine, Electronic Arts had access to all its source code and other confidential information.  
2 Eventually, Electronic Arts decided that it wanted to make its own game SuperCross. It did so  
3 without ever establishing a clean room development environment. Delphine was forced to sue  
4 Electronic Arts and the case settled after the court found that Delphine had “demonstrated a  
5 cognizable non-frivolous claim.”

6 110. Similar conduct persists to this day. In the face of Activision’s “Call of Duty”  
7 franchise, which was generally considered far superior to EA’s competing title “Medal of Honor,”  
8 EA simply hired away the developers of Call of Duty. Activision has been forced to go to court in  
9 order to defend its intellectual property from Electronic Arts.

10 111. Electronic Arts has also become notorious for using the names and likenesses of  
11 individuals without their permission. Most notably, EA has for years utilized actual NCAA  
12 football and basketball players in its NCAA brand videogames without compensating them. EA  
13 has also used the likenesses of certain retired players in its Madden software without authorization.  
14 Similarly, EA recently used the likenesses and personality of an actual U.S. Special Forces soldier  
15 in and on the box cover of its Medal of Honor videogame without providing compensation. In  
16 each instance, the affected individuals have been forced to pursue legal against Electronic Arts to  
17 vindicate their statutory publicity rights.

## 18 IX. CAUSES OF ACTION

### 19 FIRST CAUSE OF ACTION 20 (Breach of Contract)

21 112. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully  
22 set forth herein.

23 113. The 1986 Contract as subsequently amended constitutes a valid and enforceable  
24 contract that has never been terminated except with respect to the Nintendo platform.

25 114. Every version of Madden produced by Electronic Arts is a derivative work or  
26 remote derivative work within the meaning of the 1986 Contract.



1 115. Electronic Arts has breached the terms of the 1986 Contract and amendments  
2 thereto by failing to pay royalties on versions of Madden other than those developed directly by  
3 Antonick.

4 116. As a result of Electronic Arts' breaches, Plaintiff has been injured. Specifically,  
5 Electronic Arts owes tens of millions of dollars in back royalties and interest and a royalty of at  
6 least 1.5% going forward on all sales of Madden, NCAA Football and any other software derived  
7 from software developed by Plaintiff or derived from software that itself can be traced back to  
8 software developed by Plaintiff.

9 **SECOND CAUSE OF ACTION**  
10 **(Fraud)**

11 117. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully  
12 set forth herein.

13 118. Electronic Arts had contractual and common law duties to protect the intellectual  
14 property of Antonick, to give him notice and the opportunity to develop derivative works and to  
15 place a notice of Antonick's copyright on all derivative works.

16 119. Electronic Arts made numerous false representations and omissions of materials  
17 facts to Plaintiff including but not limited to the following:

- 18 (a) Orally and in the 1991 Termination Amendment, Electronic Arts assured  
19 Plaintiff that it would protect his intellectual property and contractual rights.  
20 Those statements were false and known to be false when made by Electronic  
21 Arts. Plaintiff relied on these statements by continuing to contribute  
22 intellectual property to Electronic Arts;
- 23 (b) Electronic Arts repeatedly informed Plaintiff that it was not using and did  
24 not use his intellectual property when it developed the Sega version of  
25 Madden. Specifically, and without limitation, these representations were  
26 made to Plaintiff by Electronic Arts employees Richard Hilleman and Bing  
27 Gordon multiple times. Plaintiff has a specific and contemporaneous record  
28 of one such a conversation that occurred on August 28, 1990 with Richard

1 Hilleman. During the call, Richard Hilleman told Antonick that the Sega  
2 version was being developed without any reference to or use of his  
3 intellectual property. Plaintiff relied on this and other similar statements by  
4 continuing to contribute intellectual property to Electronic Arts and by  
5 failing to enforce his contractual rights and failing to take steps to protect his  
6 intellectual property;

7 (c) Electronic Arts falsely informed Plaintiff that he needed to sign the 1991  
8 Termination Amendment because of legal issues with Nintendo. In fact, the  
9 1991 Termination Amendment was part of Electronic Arts plan to use  
10 Plaintiff's intellectual property for its own benefit while evading its  
11 responsibility to pay royalties. Plaintiff relied on these statements by  
12 continuing to contribute intellectual property to Electronic Arts. Plaintiff  
13 additionally relied on these false statements by failing to enforce his  
14 contractual rights, failing to take steps to protect his intellectual property and  
15 by signing the 1991 Termination Amendment;

16 (d) In developing the Sega Genesis version and subsequent versions of Madden,  
17 Electronic Arts failed to give Plaintiff "written notice and the opportunity to  
18 develop" derivative works as would be required under the 1986 Contract if  
19 Electronic Arts were creating a derivative work. By failing to give this  
20 notice, Electronic Arts' intentionally, affirmatively and falsely represented  
21 that subsequent versions of Madden were not subject to royalty. Plaintiff  
22 relied on these false statements by failing to enforce his contractual rights  
23 and failing to take steps to protect his intellectual property;

24 (e) Electronic Arts intentionally and falsely represented that Antonick's  
25 intellectual property was not utilized in its Madden software by failing to  
26 place a copyright notice crediting Antonick on the packaging of versions of  
27 Madden released after 1991 as required by the 1986 Contract. Plaintiff  
28

1                   relied on these false statements by failing to enforce his contractual rights  
2                   and failing to take steps to protect his intellectual property.

3                   (f) For many years following the termination of its relationship with Antonick,  
4                   Electronic Arts provided Antonick with quarterly royalty statements  
5                   affirmatively and falsely representing that it owed him no royalties on  
6                   software released after 1991. Electronic Arts' royalty statements were false  
7                   and intended to mislead Antonick into thinking that subsequent versions of  
8                   Madden were not subject to royalty. Plaintiff relied on these false  
9                   statements by failing to enforce his contractual rights and failing to take  
10                  steps to protect his intellectual property;

11                  (g) Electronic Arts provided Antonick with a declaration from EA founder Trip  
12                  Hawkins dated November 6, 2009 which falsely and fraudulently states that  
13                  EA developed the Sega Genesis version of Madden "without using anything  
14                  from Robin Antonick, including any software, code, tools, engines, utilities,  
15                  graphics, algorithms, libraries or technologies . . . developed by Robin  
16                  Antonick." These statements were false and known to Electronic Arts to be  
17                  false. These statements were made to induce Plaintiff not to bring suit and,  
18                  in fact, caused Plaintiff to delay suit by several months while Plaintiff  
19                  completed an analysis of Electronic Arts' code. Plaintiff relied on these  
20                  false statements by failing to immediately enforce his contractual rights and  
21                  failing to take steps to immediately take steps to protect his intellectual  
22                  property;

23                  (h) Electronic Arts provided Antonick with a declaration from current EA Chief  
24                  Creative Officer Richard Hilleman dated November 17, 2009 which falsely  
25                  and fraudulently states that "the later versions of John Madden Football,  
26                  Madden NFL and EA's hockey games were developed "without using any  
27                  software or development work from Robin, including software, code, code  
28                  structure, tools, engines, utilities, graphics, algorithms, libraries,

1 technologies, or technical solutions. . . .” These statements were false and  
2 known to Electronic Arts to be false. These statements were intended to  
3 induce Plaintiff not to bring suit and, in fact, caused Plaintiff to delay suit by  
4 several months while Plaintiff completed an analysis of Electronic Arts’  
5 code. Plaintiff relied on these false statements by failing to immediately  
6 enforce his contractual rights and failing to take steps to immediately take  
7 steps to protect his intellectual property.

8 120. All the above false statements and misleading material omissions were made for the  
9 purpose of defrauding Plaintiff out of valuable trade secrets and other intellectual property and his  
10 contractual royalty rights and had that effect.

11 121. Plaintiff relied on Electronic Arts’ false and fraudulent statements by continuing to  
12 contribute intellectual property to Electronic Arts and by failing to enforce his contractual rights to  
13 substantial royalties, continued development work and credit for prior work.

14 122. As a result of its fraud, Electronic Arts has received substantial benefits and profits.

15 123. As a result of its fraud, Plaintiff has been injured by, among other things, losing  
16 millions in royalties.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 19 A. Actual damages, statutory damages, punitive damages, and such other relief as  
20 provided by the statutes cited herein;
- 21 B. Disgorgement of all profits earned by Defendant from the sale of the Madden  
22 videogame franchise, NCAA Football videogame franchise and any other videogame franchise  
23 utilizing the intellectual property of Plaintiff;
- 24 C. Prejudgment and post-judgment interest on such monetary relief;
- 25 D. The costs of bringing this suit, including reasonable attorneys’ fees; and
- 26 E. All other relief to which Plaintiff may be entitled at law or in equity.

27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**X. JURY TRIAL DEMANDED**

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

DATED: March 30, 2011

THE PAYNTER LAW FIRM PLLC

By   
STUART M. PAYNTER

1200 G Street N.W., Suite 800  
Washington, D.C. 20005  
Telephone: (202) 626-4486  
Facsimile: (866) 734-0622  
Email: [stuart@smplegal.com](mailto:stuart@smplegal.com)

HAGENS BERMAN SOBOL SHAPIRO LLP  
Robert B. Carey (*Pro Hac Vice pending*)  
Leonard W. Aragon (*Pro Hac Vice pending*)  
11 West Jefferson Street, Suite 1000  
Phoenix, Arizona 85003  
Telephone: (602) 840-5900  
Facsimile: (602) 840-3012  
Email: [rob@hbsslw.com](mailto:rob@hbsslw.com)  
[leonard@hbsslw.com](mailto:leonard@hbsslw.com)

HAGENS BERMAN SOBOL SHAPIRO LLP  
Shana E. Scarlett (217895)  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
Email: [shanas@hbsslw.com](mailto:shanas@hbsslw.com)

Steve W. Berman (*Pro Hac Vice pending*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1918 Eighth Avenue, Suite 3300  
Seattle, Washington 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
Email: [steve@hbsslw.com](mailto:steve@hbsslw.com)

Attorneys for Plaintiff Robin Antonick