

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**C. A. NO. 6:05-cv-131-orl-19-JGG**

**TAM SU,**

**Plaintiff,**

**v.**

**ELECTRONIC ARTS, INC.,**

**Defendant.**

**FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**

**INTRODUCTION**

1. Defendant Electronic Arts, Inc. (“EA”) has, since January 24, 2002, wilfully violated The Fair Labor Standards Act, 29, U.S.C. §§201 *et seq.* (“FLSA”) by failing to pay to Plaintiff, Tam Su, and all other persons employed by EA as Assistant or Associate Artists (“Assistant and Associate Artists”) time and one-half their regular rates of pay for hours worked in excess of forty per week. These persons have been classified by Defendant as exempt from the provision of the FLSA, while at the same time being assigned by Defendant the primary duty to produce or install computer imagery designed by others for use in video games manufactured and sold by the Defendant, which is inconsistent with such exempt status.

2. Plaintiff brings this action pursuant to 29 U.S.C. §216 (b) on his own behalf and on behalf of all other persons who are or have been employed by Defendant in Florida as Assistant or Associate Artists between January 24, 2002 and the date of the final disposition of this action (“the

Class Period”). Plaintiff and all such similarly situated persons are hereinafter referred to jointly as “the Class” or “the members of the Class.”

3. The members of the Class are similarly situated because they all perform the same basic job duties and assignments, and all are subject to Defendant’s common policies and practices in Florida of classifying Assistant and Associate Artists as exempt from the provisions of the FLSA, and willfully failing to pay overtime to those employees.

### **PARTIES**

4. Defendant Electronic Arts, Inc. is a corporation organized under the laws of Delaware and is headquartered in Redwood City, California. EA operates studios to develop its entertainment software games, one of which is located in Maitland, Florida (the “Tiburon Studio”), within this district.

5. EA develops, markets, publishes and distributes interactive entertainment software games that are playable by consumers on a variety of platforms such as home video game machines, personal computers, handheld game machines, and on-line systems over the internet.

6. Plaintiff Tam Su is a resident of Emeryville, California.

7. Plaintiff was employed by the Defendant at the Tiburon Studio as an Associate Artist from approximately September, 2002, until September, 2004.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction of this Complaint pursuant to 28 U.S.C. §1331 and 29 U.S.C. §216(b).

9. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), because the Defendant owns and operates a studio here, and many of the wrongful acts complained of occurred in this district.

10. Defendant is engaged in interstate commerce.

### **INDIVIDUAL ALLEGATIONS**

11. EA is a part of the motion picture, television and theatrical entertainment industry. It competes with companies such as Disney, Sony, Time Warner, Vivendi Universal, Lucas Films and others in the entertainment market. Its products include, among other things, video game versions of The Lord Of The Rings, James Bond, Harry Potter and many other popular films, as well as popular television shows such as Saturday morning cartoons or Star Trek.

12. Once EA makes a formal commitment to develop a video game, Producers work with Designers to create a production plan for the game, which includes a master design document that specifies the contents of the game, including game play, fiction, characters, and levels. Based in part on that master design document, a list of tasks to be done and a schedule under which such tasks are to be performed is completed.

13. EA employs Tools and Software Engineers to transform the ideas contained in the master design document into a game prototype.

14. Before the game software is created by the Engineers, EA also employs Concept Artists who create paintings and sketches to show how the images in the game will look. These illustrations are usually noncomputerized models for the computer-generated images that will later appear in the video game.

15. A variety of types of images appear in video games, including characters (human or other), objects of all kinds, special effects such as explosions, and general background and environment images, including light and shadow. An Art Production Manager and Art Directors oversee and direct the process by which each such image is created and incorporated into the video game.

16. The primary duties of the Plaintiff and all other Assistant and Associate Artists employed by EA in Florida are to create, copy, reproduce or install images designed by others into the actual video game, using commercial or in-house software computer programs.

17. An Art Production Manager, Art Directors and Producers closely supervise and direct such Assistant and Associate Artists in the performance of their duties, providing specific instructions and specifications with respect to minute details, such that the images are consistent with the overall design of the game and that the images will appear alongside each other appropriately. Art Directors (and in some cases, Producers or the Art Production Manager) routinely request that such Assistant and Associate Artists alter or refine images in order to make them fit more appropriately in the game.

18. For example, Art Directors (and, in some cases, Producers or the Art Production Manager) commonly perform “dailies” in which they literally stand over the shoulders of Assistant and Associate Artists while they are working on an image and review the work to indicate what changes are required to render the images satisfactory. These “dailies” occurred each morning and included four to five supervisory Producers and Art Directors. During periods where time is of the essence, the “dailies” could occur multiple times every day. Art Directors and Producers also

regularly communicated specific email instructions and requests to Assistant and Associate Artists concerning specific images.

19. Generally speaking, creative judgments with respect to images created, copied or reproduced by Assistant and Associate Artists are made by Art Directors or — in some instances — by Producers or the Art Production Manager.

20. Plaintiff's work required the use of computers and Plaintiff is skilled in the use of computer software to produce, copy, and install images for use in computer games.

21. Plaintiff did not have management responsibilities. He did not customarily and regularly direct the work of two or more other employees. Plaintiff did not have the authority to hire or fire other employees, and he was not responsible for making hiring and firing recommendations.

22. Plaintiff did not have duties directly related to the creation or implementation of management policies, or to the general business operations of EA.

23. Plaintiff did not require a license or certification from the state of Florida or any other governmental entity in order to perform his job.

24. Plaintiff did not perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

25. Plaintiff did not perform work that is original and creative in character in a recognized field of artistic endeavor.

26. Plaintiff did not customarily and regularly exercise discretion and independent judgment. Rather, he followed strict instructions and specifications to create, copy, reproduce, install and give movement to imagery to be used in the video games, and relied on his general manual and

intellectual ability and training with computers and certain software programs provided to him by EA in order to do so, following the instructions and specifications he was given by his supervisors.

27. Plaintiff's work was not predominantly intellectual and varied in character.

28. Plaintiff neither chose what images to create, copy or reproduce, nor determined how or where those images should appear in the video game. Instead, he simply provided the images that were assigned to him in accordance with Defendant's instructions and specifications. An Art Production Manager and Art Directors supervised him closely to ensure timely production of each image assigned in conformity with EA's specifications and instructions.

29. Plaintiff's job duties did not consist of the application of computer systems analysis techniques and procedures.

30. Plaintiff's job duties did not require him to be highly skilled or proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering.

31. Plaintiff's job duties did not involve computer systems analysis or programming. Instead, his duties only required him to be skilled in the operation and use of computers and computer software to create, copy, reproduce, install or give movement to imagery for effects used in video games or entertainment software.

32. Plaintiff was salaried. He regularly worked more than eight hours a day and forty hours in a workweek. He worked on weekends and occasionally on national holidays and was not paid any overtime compensation for such work.

### **COLLECTIVE ACTION ALLEGATIONS**

33. The duties and business activities of the Class Members were essentially the same as the duties and activities of the Plaintiff described above. At all times during the Class Period, all of the Class members were employed in the same or similar job as the Plaintiff and were paid in the same manner and under the same standard employment procedures and practices as the Plaintiff.

34. The members of the Class, like the Plaintiff, all were subject to the same unlawful policy or plan to classify them as exempt from the provisions of the FLSA, while at the same time assigning them a primary duty inconsistent with exempt status.

35. During the Class Period, Defendant was fully aware that the primary duty of Plaintiff and the members of the Class was inconsistent with exempt status, and that the members of the Class were and are not exempt from the overtime provisions of the FLSA.

36. The Defendant's violations of 29 U.S.C. §207(a) were repeated, willful and intentional.

37. The Plaintiff and the members of the Class have been damaged by said violations of 29 U.S.C. §207(a).

38. Pursuant to 29 U.S.C. §207(a) and §216(b), Defendant is liable to the Plaintiff and the members of the Class for the full amount of all their unpaid overtime compensation, plus an additional equal amount as liquidated damages, plus the attorneys fees and costs of the Plaintiff and members of the Class.

39. While the exact number of Class Members is unknown to Plaintiff at the present time, based on information and belief, there are more than 150 such persons. Thus, a collective action is the most efficient mechanism for resolution of the claims of the members of the Class.

40. In addition, an action under 29 U.S.C. §216(b) is superior to other available methods for the fair and efficient adjudication of this controversy since the damages suffered by individual members of the Class may be relatively small, and the expense and burden of individual litigation would make it impossible for such Class Members individually to redress the wrongs done to them. Moreover, because of the similarity of the Class members' claims, individual actions would present the risk of inconsistent adjudications subjecting Defendant to incompatible standards of conduct.

41. Plaintiff is currently unaware of the identities of all the members of the Class. Accordingly, Defendant should be required to provide to Plaintiff a list of all persons employed by Defendant as Assistant or Associate Artists since January 24, 2002, stating their last known addresses and telephone numbers, so that Plaintiff can give such Class Members notice of the pendency of this action and an opportunity to make an informed decision about whether to participate in it.

#### **CLAIMS FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

42. Declare this action to be maintainable as a collective action pursuant to 29 U.S.C. §216(b), and direct the Defendant to provide to the Plaintiff a list of all persons employed by it as Assistant or Associate Artists during the Class Period, including the last known address and telephone number of each such person, so that Plaintiff can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;

43. Determine the damages sustained by the Plaintiff and the members of the Class as a result of Defendant's violations of 29 U.S.C. §207(a), and award those damages against the Defendant and in favor of Plaintiff and all members of the Class, plus an additional equal amount as liqui-

dated damages pursuant to 29 U.S.C. §216(b), plus such pre-judgment interest as may be allowed by law;

44. Award Plaintiff and the members of the Class their costs and disbursements of this suit, including, without limitation, reasonable attorneys', accountants' and experts' fees; and

45. Grant Plaintiff and the members of the Class such other and further relief as the Court may deem just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.**

Submitted by his attorneys,

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