

2. Venue is proper as a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. 28 U.S.C. § 1391. At least one of the knives identified below was purchased in San Antonio, Texas. Kershaw knives with the Speed Safe™ assisted opening technology are regularly sold in San Antonio, Texas. Venue is also proper because Defendants, or some of them, would be subject to personal jurisdiction in this District. 28 U.S.C. § 1391.

II. PARTIES

3. Plaintiff, Richard Atkins, an individual, resides in Converse, Texas, and has purchased at least 8 to 10 Kershaw knives, including the Chive knife at a Gander Mountain store in Texas.

4. Plaintiff, Oscar Zubiate, an individual, resides in San Antonio, Texas, and purchased at least 2 Kershaw knives with the Speed Safe™ assisted opening technology at an Academy store and at a Dick's Sporting Goods store in Texas.

5. Plaintiff, Michael T. Craddock, an individual, resides in Midland, Texas and purchased at least 5 Kershaw knives, including the Leek, Chive and Tactical Blur knives at a Wal-Mart store and a Cabela's store in Texas.

6. Plaintiff, Theresa McLean, an individual, resides in Mesquite, TX and acquired a Kershaw knife with the Speed Safe™ assisted opening technology.

7. Defendant, KAI USA, LTD. (NYSE: KAI), is a corporation (formerly a foreign limited partnership) headquartered in Tualatin, OR, currently d/b/a "Kershaw Knives." It is the manufacturer and distributor of Kershaw knives. It has no registered agent for service of process in Texas and therefore may be served through the Texas Secretary of State.

8. Defendant, Wal-Mart Stores, Inc. (NYSE: WMT), is a foreign corporation headquartered in Bentonville, Arkansas. Wal-Mart may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX 75201.

9. Defendant, Cabela's, Inc. (NYSE: CAB), is a foreign corporation headquartered in Sidney, NE. Cabela's, Inc. may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX 75201.

10. Defendant, Gander Mountain Company (NASDAQ: GMTN); is a foreign corporation headquartered in St. Paul, MN. Gander Mountain Company may be served with process through its registered agent, CT Corporation System, 350 North St. Paul St., Dallas, TX 75201.

11. Defendant, Academy Stores, Inc., is a domestic corporation headquartered in San Antonio, Texas and Defendant, Academy Sports & Outdoors, Ltd., is a domestic limited partnership headquartered in San Antonio, Texas (collectively, "Academy"). They may be served with process through their registered agent, A.B. Goldberg, 1301 South Flores Street, San Antonio, TX.

12. Defendant, Dick's Sporting Goods, Inc. (NYSE: DKS), is a foreign corporation headquartered in Pittsburgh, PA. Dick's Sporting Goods may be served with process through its registered agent, Corporation Service Company, 701 Brazos, Suite 1050, Austin, TX 78701.

III. FACTS

13. KAI USA, Ltd. is the manufacturer and distributor of Kershaw knives. Certain Kershaw knives incorporate the Kershaw Speed Safe™ assisted opening technology. Kenneth J. Onion is the name of a knife designer for KAI USA, Ltd. Some of the Kershaw knives that incorporate the Kershaw Speed Safe™ technology are

named Leek, Chive, Scallion and Shallot, among others, presumably after Mr. Onion. Mr. Onion is the inventor named on several folding knife patents, including Patent Nos. 6,145,202, 6,338,431 B1, and 7,395,599 B2. Kai U.S.A., Ltd. is the assignee on these folding knife patents. These patents describe and protect certain intellectual property associated with the Kershaw Speed Safe™ technology, among other knife technology. KAI USA, Ltd. engages in the wholesale distribution of Kershaw knives in the State of Texas to, among others, Wal-Mart Stores, Inc., Cabela's, Inc., Gander Mountain Company, Dick's Sporting Goods, Inc. and Academy (collectively, the "Retail Defendants"). KAI USA, Ltd. is aware that these knives are sold in Texas to consumers. The Retail Defendants sell Kershaw knives directly to Texas consumers.

14. The Texas Penal Code prohibits the intentional or knowing possession, manufacture, transport, repair, or sale of "switchblade knives." Texas Penal Code § 46.05. The Texas Penal Code defines "switchblade knife" as follows:

"Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

Texas Penal Code §46.01(11). KAI U.S.A., Ltd. manufactures and distributes many knives having blades that fold into the handles of the knives.

15. Many of these Kershaw folding knives contain a blade having a tang, which tang protrudes above the back handle when the knife is closed. Kershaw folding knives are sold throughout the State of Texas by the Retail Defendants, among others.

16. Certain Kershaw folding knives incorporate the Kershaw Speed Safe™ technology. The Kershaw Speed Safe™ technology includes a spring or torsion bar that is located on the handle.

17. When the equilibrium point of the spring or torsion bar of the Kershaw Speed Safe™ technology is passed, the blade of the folding knife opens automatically.

18. Prior to reaching the equilibrium point of the spring or torsion bar, pressure must be applied.

19. Folding knives incorporating the Kershaw Speed Safe™ technology include a blade that is located on the handle.

20. Certain knives incorporating the Kershaw Speed Safe™ technology incorporate a blade that includes a tang that protrudes above the back handle when the knife is in the closed position.

21. Kershaw folding knives incorporating the Kershaw Speed Safe™ technology open the blade automatically by applying pressure to a device located on the handle.

22. A description of a Kershaw automatic folding knife is contained in Patent No. 6,338,431 B1, wherein Kai U.S.A., Ltd. is the assignee and Mr. Onion is the inventor.

23. All Kershaw knives that incorporate the Kershaw Speed Safe™ technology open or release the blade from the handle or sheath by the application of centrifugal force.

24. Kershaw knives that incorporate the Kershaw Speed Safe™ technology have been held to be switchblade knives under Texas law. *See, e.g., Thomas v. State of Texas*, 2007 WL 4403585 (Tex. App. – San Antonio Dec. 19, 2007). Texas residents

have been arrested, indicted and convicted for possessing Kershaw knives that incorporate the Kershaw Speed Safe™ technology.

25. On information and belief, KAI USA, Ltd. is aware that Texas residents have been arrested, indicted and convicted for possessing Kershaw knives that incorporate the Kershaw Speed Safe™ technology.

26. On information and belief, each of the Retail Defendants is aware that Texas residents have been arrested, indicted and convicted for possessing Kershaw knives that incorporate the Kershaw Speed Safe™ technology. Nevertheless Kai USA, Ltd. continues to distribute its Speed Safe™ knives in Texas, and the Retail Defendants continue to sell them. The Kershaw knives sold to the retail public in Texas include those that incorporate the Kershaw Speed Safe™ assisted opening technology. Each of the Retail Defendants knowingly markets, sells and possesses Kershaw knives that incorporate the Kershaw Speed Safe™ technology in Texas.

IV. CLASS ALLEGATIONS

27. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this action meets the requirements for certification as a class action. As to KAI USA, Ltd., Plaintiffs seek the certification of a class of all persons who purchased or acquired Kershaw knives in the State of Texas which knives incorporate the Speed Safe™ assisted opening technology (the "General Plaintiff Class"). As to Wal-Mart Stores, Inc., Plaintiffs seek the certification of a class of all persons who purchased or acquired Kershaw knives in the State of Texas from Wal-Mart which knives incorporate the Speed Safe™ assisted opening technology (the "Wal-Mart Plaintiff Class"). As to Cabela's, Inc., Plaintiffs seek the certification of a class of all persons who purchased or acquired Kershaw knives in the State of Texas from Cabela's which knives incorporate the Speed

Safe™ assisted opening technology (the “Cabela’s Plaintiff Class”). As to Gander Mountain Company, Plaintiffs seek the certification of a class of all persons who purchased or acquired Kershaw knives in the State of Texas from Gander Mountain which knives incorporate the Speed Safe™ assisted opening technology (the “Gander Mountain Plaintiff Class”). As to Academy, Plaintiffs seek the certification of a class of all persons who purchased or acquired Kershaw knives in the State of Texas from Academy which knives incorporate the Speed Safe™ assisted opening technology (the “Academy Plaintiff Class”). As to Dick’s Sporting Goods, Inc., Plaintiffs seek the certification of a class of all persons who purchased or acquired Kershaw knives in the State of Texas from Dick’s Sporting Goods which knives incorporate the Speed Safe™ assisted opening technology (the “Dick’s Sporting Goods Plaintiff Class”).

28. The Plaintiff Class alleged is so numerous that joinder of all members is impracticable.

29. There are questions of law and fact common to each class member that predominate over any questions affecting only individual class members. Such common questions include but are not limited to: (1) whether the Kershaw knives incorporating the Speed Safe™ technology are switchblades under Texas law; (2) whether possession of Kershaw knives with the Speed Safe™ technology creates a risk of criminal prosecution for possession of a switchblade in the State of Texas; (3) whether under Texas law the manufacturer, distributor and retail sellers of a switchblade knife breach the implied warranty of merchantability by the marketing and sale of such knives in Texas; (4) whether and to what extent the Retail Defendants have marketed and sold Kershaw Speed Safe™ knives in the State of Texas; (5) whether the putative class members’ sales contracts for purchase of the Kershaw Speed Safe™

knives are void and/or voidable because the subject matter of those contracts is an illegal item; and (6) the appropriate remedies (including but not limited to restitution and/or injunctive relief) and measure of damages.

30. The claims of the representative plaintiffs are typical of the claims of each class member and the representative plaintiffs have no interest adverse to the interests of other members of the Plaintiff Class.

31. The representative plaintiffs will fairly and adequately protect the interests of each class member and has retained counsel experienced and competent in the prosecution of class action litigation.

32. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

COUNT ONE: BREACH OF WARRANTY OF MERCHANTABILITY

33. The allegations of paragraphs 1 through 31 are incorporated herein as though repeated in full.

34. Because, among other reasons, possession of Kershaw Speed Safe™ knives poses a risk of criminal prosecution in the State of Texas, such knives are not fit for the ordinary purposes for which knives are used, and the manufacturer, distributor and retail sellers of such knives have therefore breached the implied warranty of

merchantability that attaches to those knives under Texas law. Tex. Bus. & Com. Code § 2.314. Representative Plaintiffs and the Plaintiff Class suffered damages as a consequence thereof.

COUNT TWO: RESTITUTION FOR ILLEGAL CONTRACT

35. The allegations of paragraphs 1 through 33 are incorporated herein as though repeated in full.

36. Because, among other reasons, the subject matter of Plaintiffs' contracts for purchase of Kershaw Speed Safe™ knives are items as to which the Texas Penal Code criminalizes both sale and possession, those contracts for sale were illegal under Texas law.

37. As a result, Plaintiffs' contracts for sale are void and/or voidable under Texas law, and Plaintiffs seek restitution for the purchase price paid for their knives.

COUNT THREE: INJUNCTION

38. The allegations of paragraphs 1 through 36 are incorporated herein as though repeated in full.

39. Permanent and irreparable injury will result unless the Kershaw Speed Safe™ knives are no longer marketed and sold in Texas. Accordingly, Representative Plaintiffs and the Plaintiff Class seek a permanent injunction prohibiting the marketing and sale of these knives in Texas.

WHEREFORE, PREMISES CONSIDERED, Representative Plaintiffs on behalf of themselves and all similarly situated persons, respectfully request that this Court:

- A. Award Representative Plaintiffs and the Plaintiff Class their actual damages and all other appropriate remedies, legal or equitable, including the injunctive relief and restitution sought herein.

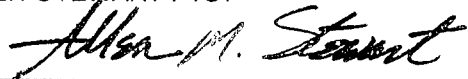
- B. Award Representative Plaintiffs and the Plaintiff Class pre-judgment and post-judgment interest.
- C. Award Representative Plaintiffs their expenses, attorneys' fees and costs as provided by applicable law.
- D. Award Representative Plaintiffs and the Plaintiff Class such other and further relief to which they may be entitled under the circumstances.

SIGNED this 6 day of January, 2009.

Respectfully submitted,

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