

NO. DC-12-02018-E

PANINI AMERICA, INC.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	101 <sup>st</sup> JUDICIAL DISTRICT
	§	
LEAF TRADING CARDS, LLC	§	
and BRIAN GRAY,	§	
	§	
Defendants.	§	
	§	
LEAF TRADING CARDS, LLC,	§	
	§	
Counter-Plaintiff,	§	
	§	
v.	§	
	§	
PANINI AMERICA, INC.,	§	
	§	
Counter-Defendant.	§	DALLAS COUNTY, TEXAS

**ORIGINAL COUNTERCLAIM BY LEAF TRADING CARDS, LLC**

Counter-Plaintiff Leaf Trading Cards, LLC (“Leaf”), complaining of Counter-Defendant Panini America, Inc. (“Panini”), avers as follows:

**DISCOVERY LEVEL**

Plaintiff alleges that discovery in this cause should be conducted under Tex. R. Civ. P. 190.2 as a “Level 2” case.

**INTRODUCTION**

Leaf brings this declaratory judgment action because Panini challenges Leaf’s ownership and use of property (i.e., stickers containing the autograph of Kevin Durant) acquired by Leaf in the Summer of 2011. Leaf seeks a declaration that Leaf owns the stickers and only Leaf has the right to control the use of the stickers.

## **PARTIES**

1. Leaf is a Texas limited liability company with its principal place of business in Dallas County, Texas and has previously appeared herein.

2. Panini is a Delaware corporation with its principal place of business in Dallas County, Texas and has previously appeared herein.

## **VENUE**

3. Venue of this cause is proper in Dallas County, Texas pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.001-15.002 and 15.062.

## **BACKGROUND FACTS**

### **Leaf's Business and Products**

4. Leaf began operations in 2010 as a manufacturer and seller of sports trading cards, including basketball cards. Further information about Leaf and its products is available at [www.leaftradingcards.com](http://www.leaftradingcards.com).

5. Leaf markets and sells its products to dealers and distributors of trading cards and sports memorabilia who then resell Leaf's products to individual collectors. Leaf does not directly sell its products as a retailer and does not have an online store on its website.

### **Leaf's Buyback Card Products**

6. In addition to producing and selling its own trading cards, Leaf purchases cards for resale. Leaf buys trading cards on the secondary market (e.g., eBay, sports memorabilia shows, individual collectors) which were manufactured by other companies (e.g., Topps, Upper Deck, Panini). Trading cards bought on the secondary market and resold are referred to as "buyback cards." Leaf sells buyback cards in combination with

Leaf's own trading cards. Leaf does not purchase any of the buyback cards from the original manufacturer of the card.

### **The Market for Autographed Cards**

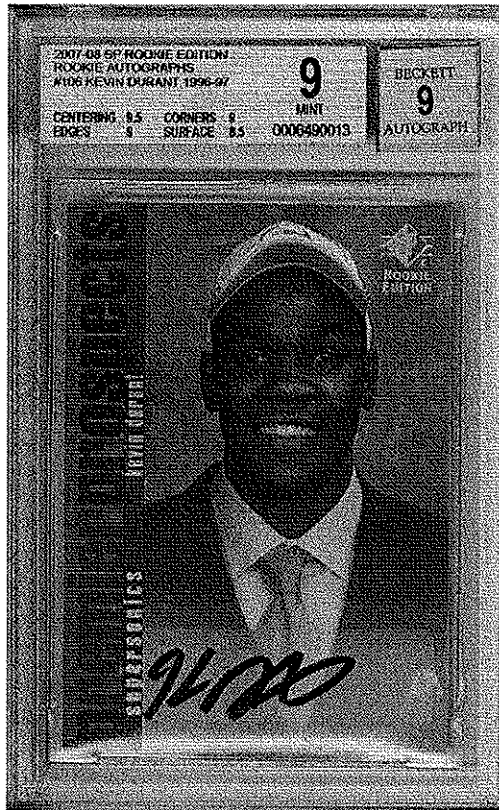
7. There is a large market for trading cards that contain an authentic autograph by the pictured athlete. Traditionally, athletes physically signed the cards. In recent years, autographs on trading cards have also taken the form of signed stickers. The athlete will typically sign a sheet of stickers which are then affixed to the manufacturer's cards. The manufacturer commonly certifies the signatures as authentic by the use of holographic logos on the stickers.

8. The market for Durant trading cards with an autograph sticker is not currently limited to cards available only via Panini. Rather, such cards are commonly available from trading card dealers and on eBay. There are numerous eBay offerings for Durant trading cards, including cards with autograph stickers. Examples of Durant cards with autograph stickers currently offered on eBay are attached hereto as Exhibit "A" and incorporated herein by reference:

A-1 Upper Deck card issued in 2007/2008, before Panini was incorporated

[http://www.ebay.com/itm/07-08-SP-Rookie-Edition-106-Kevin-Durant-96-97-Autograph-BGS-MINT-9-AUTO-9-/320795359928?pt=US\\_Basketball&hash=item4ab0e4bab8](http://www.ebay.com/itm/07-08-SP-Rookie-Edition-106-Kevin-Durant-96-97-Autograph-BGS-MINT-9-AUTO-9-/320795359928?pt=US_Basketball&hash=item4ab0e4bab8)

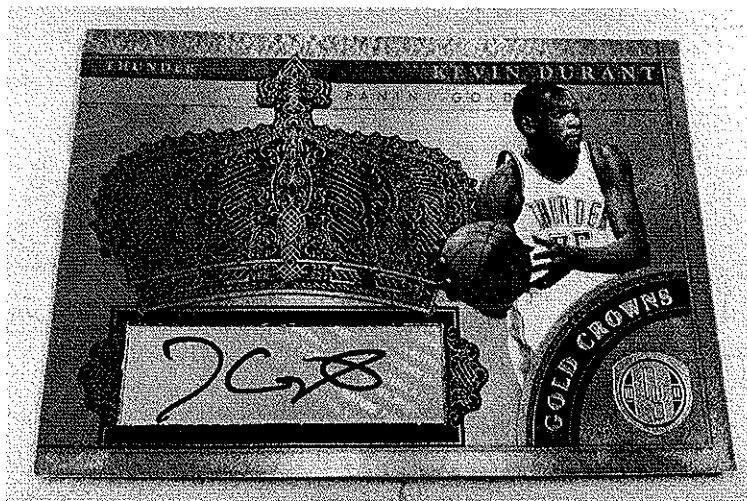
The following image is the card being offered in Exhibit A-1:



A-2 Panini card for 2010/2011

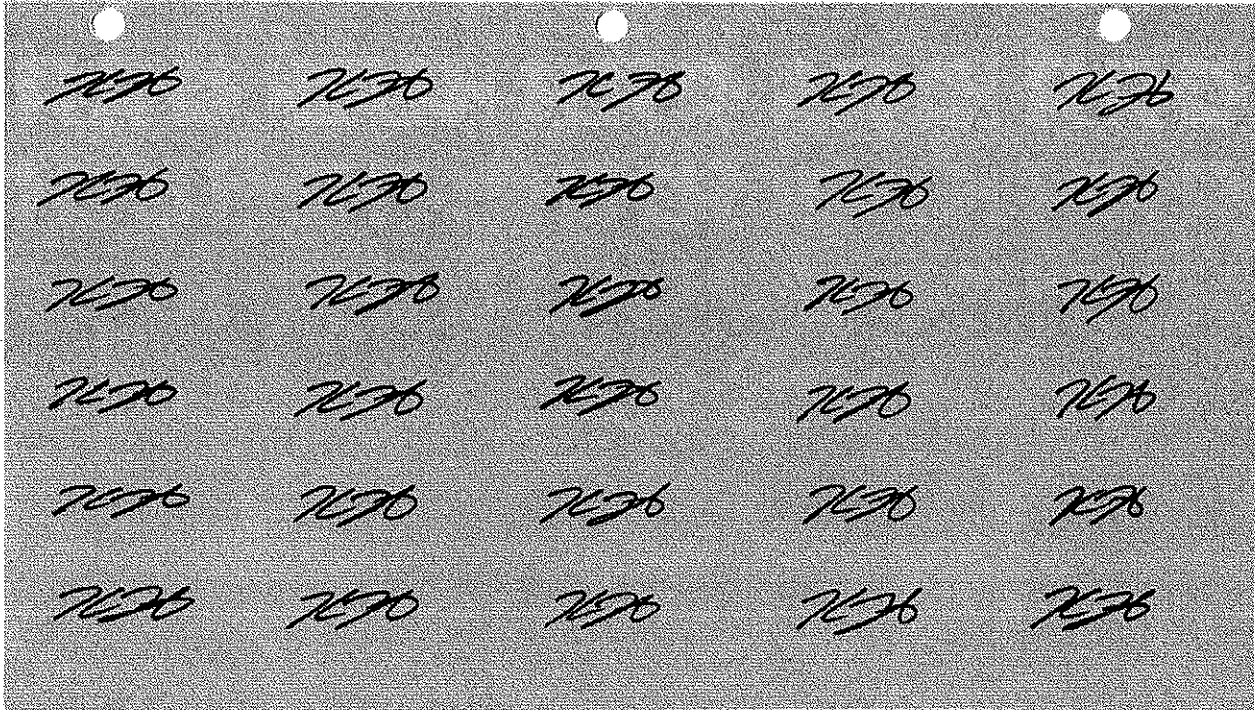
[http://www.ebay.com/itm/2-5-KEVIN-DURANT-AUTO-2010-11-GOLD-STANDARD-Autograph-Gold-Crowns-/220944832815?pt=US\\_Basketball&hash=item337156992f](http://www.ebay.com/itm/2-5-KEVIN-DURANT-AUTO-2010-11-GOLD-STANDARD-Autograph-Gold-Crowns-/220944832815?pt=US_Basketball&hash=item337156992f)

The following image is the card being offered in Exhibit A-2:

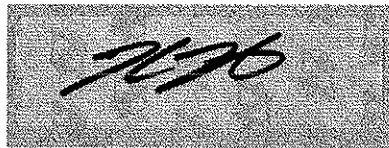


**Leaf's Summer 2011 Purchase of Kevin Durant Stickers**

9. In the summer of 2011, Leaf purchased approximately 750 stickers (the "Leaf Stickers") that contained the autograph of Kevin Durant. The following image is an example of one of the sheets of the Leaf Stickers:



10. The following image is a single sticker from the group of Leaf Stickers:



11. Each of the Leaf Stickers contains a hologram that states "Authentic Autograph."

12. None of the Leaf Stickers contains Leaf's name or logo.

### **Panini Knew in July, 2011 that Leaf Owned the Leaf Stickers**

13. Panini admits that it knew that Leaf owned the Leaf Stickers in July, 2011. Petition at Exhibit 2. Panini does not claim that it manufactured or distributed the Leaf Stickers. In fact, Panini confirmed in July, 2011 that the Leaf Stickers are “on Upper Deck holograms.” Petition at Exhibit 2, page 2. Leaf offered to sell the Leaf Stickers to Panini in July, 2011, but Panini chose to not purchase the Leaf Stickers. Petition at Exhibit 2, page 2.

14. Panini signed its December, 2011 agreement with Durant five (5) months after Panini learned that Leaf owned the Leaf Stickers.

### **Panini’s Wrongful Efforts to Seize Leaf’s Stickers**

15. Panini filed this lawsuit claiming that Leaf was not entitled to own, possess, or use the Leaf Stickers. Panini’s lawsuit seeks a mandatory injunction that “Leaf and Gray shall deliver to Panini, without retaining any copies, all [of the Leaf Stickers].” *Plaintiff’s Original Petition and Verified Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction* (“Petition”) at ¶ 19(A). Panini also seeks an injunction that “Leaf of Gray shall not use or disclose any [of the Leaf Stickers].” Petition at ¶ 19(B).

16. Panini’s only allegation that it has “rights” to the Leaf Stickers is a license agreement between Panini and Durant signed in December, 2011 – five (5) months after Panini knew that Leaf acquired the Leaf Stickers. Petition at ¶ 7. Panini only attached to its Petition the first two pages of the agreement and has failed to provide to the Court, Leaf, or Gray the entire agreement. Panini has not even informed the Court, Leaf, or Gray about the duration of the term of the agreement.

17. Panini never informed Leaf that Panini contested Leaf's use of the Leaf Stickers until this lawsuit was filed on February 23, 2011. The lawsuit was filed more than seven (7) months after Panini first knew that Leaf owned the Leaf Stickers and more than two (2) months after the signed agreement between Panini and Durant.

18. Panini's request for a temporary restraining order was promptly denied within a few hours after the lawsuit was filed.

### **COUNT ONE**

#### **DECLARATORY JUDGMENT**

19. Leaf incorporates by reference the allegations of Paragraphs 1 through 18.

20. Leaf seeks a declaratory judgment that:

- A. Leaf owns the Leaf Stickers which were purchased by Leaf in the Summer of 2011, more than five (5) months before the December, 2011 signed agreement between Panini and Durant.
- B. The Leaf Stickers are not within the scope of the December, 2011 signed agreement between Panini and Durant.
- C. Leaf has the right to use the Leaf Stickers as it solely determines.

### **COUNT TWO**

#### **ATTORNEY'S FEES**

21. Leaf incorporates by reference the allegations of Paragraphs 1 through 20.

22. Leaf is entitled to recover from Panini all reasonable and necessary attorneys' fees as are equitable and just through the trial and all appeals of this action.

**CONDITIONS PRECEDENT**

23. All conditions precedent to Leaf's recovery under all counts herein have occurred, or been performed or waived.

WHEREFORE, PREMISES CONSIDERED, Leaf prays that Panini answer herein, and that upon final hearing, this Court award to Leaf the relief requested herein, together with attorney's fees, costs of court, and such other and further relief, at law and in equity, to which Leaf may show itself justly entitled.

Respectfully submitted,



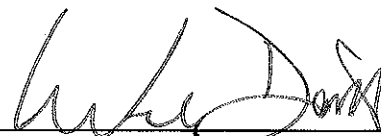
O. Luke Davis, III  
State Bar No. 05532700

GLAST, PHILLIPS & MURRAY, P.C.  
14801 Quorum Drive, Suite 500  
Dallas, Texas 75254-1449  
(972) 419-8300  
(972) 419-8329 (FAX)

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2012 a true and correct copy of the foregoing document was served via certified mail, return receipt requested to Plaintiff's counsel, William M. Toles, Wright & Toles, Abrams Centre, 9330 LBJ Freeway, Suite 1400, Dallas, Texas 75243.



O. Luke Davis, III



# Exhibit “A”



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### 07/08 SP Rookie Edition #106 Kevin Durant 96/97 Autograph BGS MINT 9 AUTO 9

Item condition: Like New

Price: US \$169.78

Buy It Now

Add to cart

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Bill Me Later: \$5 back and 6 mos to pay on 1st purchase Subject to credit approval. See terms

Shipping: FREE Expedited Shipping | See all details

Delivery: Estimated between Mon, Mar. 5 and Tue, Mar. 6

Returns: 3 days money back, buyer pays return shipping | Read details

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#### Other item info

Item number: 320795359928

Item location: GREENSBURG, PA States

Ships to: Worldwide

Payments: PayPal, Bill Me Later

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Sell one like this

Description Shipping and payments

Seller assumes all responsibility for this listing.

#### Item specifics

Condition: Like New: An item that looks as if it was just taken out of shrink wrap. No visible wear, and all facets of... Read more  
Card Attributes: Autograph, Rookie  
Professionally Graded: Graded  
Professional Grader: Beckett (BGS)

Original/Reprint: Original  
Product: Single - Insert  
Year: 2007-08  
Card Manufacturer: Upper Deck

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- 06/07 Basketball Products
- 06/07 Hockey Products
- 07/08 Basketball Products
- 07/08 Hockey Products
- 08/09 Basketball Products
- 08/09 Hockey Products
- 09/10 Basketball Products

**07/08 SP ROOKIE EDITION NBA**  
**96/97 STYLE ROOKIE AUTOGRAPH CARD**  
**#106 KEVIN DURANT**  
**Graded: BGS MINT 9 AUTOGRAPH 9**  
**Centering 9.5 Corners 9 Edges 9 Surface 8.5**  
**#0006490013**



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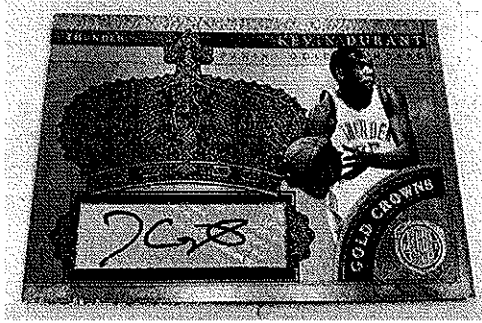
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### #2/5 KEVIN DURANT AUTO 2010/11 GOLD STANDARD Autograph "Gold Crowns"



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Sell one like this

Item condition: **Brand New**

Time left: 1 day 7 hours (Feb 29, 2012 18:19:06 PST)

Price: **US \$250.00**

Buy It Now

Add to cart

Best Offer:

Make Offer

Add to Watch list

Bill Me Later: \$5 back and 6 mos to pay on 1st purchase  
Subject to credit approval. See terms

Shipping: **FREE** Expedited Shipping See discounts | See all details

Delivery: Estimated between **Sat, Mar. 3** and **Mon, Mar. 5**

Returns: 7 days money back, buyer pays return shipping | Read details

Print | Rep

#### Seller info

gothedistancecards (3342 ★)  
99.8% Positive feedback

Save this seller  
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Visit store: Go The Distance Sports

#### Other item info

Item number: 220944832815

Item location: Reseda, CA, United States

Ships to: United States

Payments: PayPal, Bill Me Lat  
See details

History: 8 offers

#### Description

#### Shipping and payments

Seller assumes all responsibility for this listing.

#### Item specifics

Condition: Brand New: An item that has never been opened or removed from the manufacturer's sealing (if applicable). Item ... Read more

Card Attributes: Autograph, Serial Numbered

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Up for sale is a NEW 2010/11 Panini Gold Standard Kevin Durant autograph serial numbered 2/5.

The card is pack fresh, at least NM-MT with no glaring flaws. Please see scan of the actual item you will receive and see my other auctions. Thanks and good luck!

**FREE Shipping includes bubble envelope with Delivery Confirmation (within the United States).**

**Payment taking longer than 5 days will result in a NPB notice.  
I ship 5 days a week so its worth a quick payment.  
Combined shipping does not apply to boxes, larger lots,  
or items ending more than 5 days apart.**

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