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CAUSE NO. _____

PANINI AMERICA, INC.

VS

LEAF TRADING CARDS AND
BRIAN GRAY

§ IN THE DISTRICT COURT
§
§ DALLAS COUNTY, TEXAS
§
§ 101st-E
§
§ _____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFF, PANINI AMERICA, INC., ("Panini"), files this its Original Petition and Verified Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendant LEAF TRADING CARDS ("Leaf") and BRIAN GRAY ("Gray"), and in support thereof, would respectfully show the Court and Jury the following:

PARTIES AND SERVICE

1. Panini is a Delaware corporation with its principal place of business in Irving, Dallas County, Texas.
2. Leaf is a Texas limited liability corporation and may be served with process through its registered agent, Brian Gray, 15944 Midway Road, Addison, Texas 75001.
3. Gray is an individual and may be served with process at, 15944 Midway Road, Addison, Texas 75001.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action because the amount in controversy is in excess of the minimum jurisdictional amount.
5. Venue is proper in Dallas County, Texas pursuant to §15.002 of the Texas Civil Practice and

Remedies Code and § 65.023 (Vernon Supp. 2000), because Leaf's principal office in this state is in Dallas County.

FACTUAL BACKGROUND

6. Panini America is licensed to produce National Football League (NFL) and National Hockey League (NHL) trading cards. Panini also has the exclusive rights on producing National Basketball Association (NBA) trading cards. Success in the trading card industry is based, in large measure, on reputation as well as athletes that you have "exclusive" agreements with. As a result of these factors, Panini takes its reputation very seriously. Additionally, it has expended significant time and money to have "exclusive agreements" with a number of athletes in the NFL, NHL, and NBA.
7. On December 20, 2011, Kevin Durant ("Durant") signed a license agreement with Panini. (See Exhibit "1") [Due to proprietary nature of the License Agreement, the entire License Agreement will be submitted *in camera*]. This agreement grants Panini an **exclusive** license to use Durant's name, approved nicknames, approved likeness, approved photograph, approved picture, approved biography, statistics, game-used equipment, approved image and **approved** signature. Durant is a Three-Time NBA All-Star (2010 - 2012), Two-Time NBA Scoring Champion (2010 - 2011), Two-Time All NBA First Team (2010 - 2011), and NBA Rookie of the Year (2008).
8. Leaf produces trading cards and sports collectibles. Leaf was founded by Brian Gray. Gray is currently the President of Leaf.
9. Gray is President of Leaf Trading Cards and is currently marketing the sale of approximately 750 autograph stickers of Kevin Durant autograph. (See Exhibit "2" and

Exhibit "3").

10. Since Panini has an exclusive agreement to use Durant's approved signature since December 20, 2011, Panini seeks to prohibit Leaf and Gray from marketing, selling, and/or distributing Durant autograph signature stickers.

CAUSE OF ACTION

COUNT I: TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

11. Panini alleges and incorporates the paragraphs set forth above.
12. Panini has a valid contract with Durant. As shown above, Leaf and Gray are willfully and intentionally interfering with the contract between Panini and Durant.
13. As a direct result of the actions of Leaf and Gray, Panini will suffer immediate and irreparable injury, loss, harm, or damage, will have no adequate remedy at law, and will continue to suffer irreparable injury, loss, harm, or damage and have no adequate remedy at law unless Leaf and Gray are restrained from their present conduct. Accordingly, Panini is entitled to injunctive relief to prevent further wrongful conduct by Leaf and Gray.

PROBABLE RIGHT TO RELIEF

14. It is probable Panini will recover both legal and equitable remedies from Leaf and Gray for tortious interference with an existing contract. Specifically, Panini has a probable right to recovery regarding:
 - A. Leaf and Gray's interference with the contract between Panini and Durant. Such breach entitles Panini to injunction based on Texas Law.

PROBABLE INJURY

15. If the relief requested is not granted, Panini will suffer imminent harm and irreparable injury

and will have no adequate remedy at law because among other things:

- A. Leaf and Gray's attempt to market the Durant signature stickers will cause irreparable damage to Panini's relationship with clients;
- B. Leaf and Gray's interference with the contract between Panini and Durant will cause irreparable damage to Panini and Durant.

BOND

16. Panini will post a reasonable bond, if necessary, as set by the Court in this case.

REQUESTED RELIEF

17. Panini requests a temporary restraining order and, on a full-hearing, on this matter, a temporary and permanent injunction providing as follows:
18. Leaf and Gray together with their agents, servants and employees, attorneys, and those personally active considered participants with them, be enjoined as follows:
19. (A) Leaf and Gray shall deliver to Panini, without retaining any copies, all Durant autograph signature stickers;
- (B) Leaf or Gray shall not use or disclose any Durant autograph signature stickers;
20. In addition, Panini requests whatever further relief, at law and in equity, to which it may be entitled including, but not limited to:
- A. An accounting from Leaf and Gray for any and all transactions conducted in relation to Durant autograph signature stickers;
 - B. Any documents regarding marketing of the Durant autograph signature stickers;
 - C. All communications in relations to the efforts to market the Durant autograph signature stickers;

- D. Exemplary damages at the highest amount allowed by applicable laws;
- E. Costs, disbursements, and attorney's fees pursuant to applicable law.

Respectfully submitted,

WRIGHT & TOLES
Abrams Centre
9330 LBJ Freeway
Suite 1400
Dallas, Texas 75243
Tel: 972.231.6001
Fax: 972.231.9150

By: 
WILLIAM M. TOLES, P.C.
State Bar No. 00798550

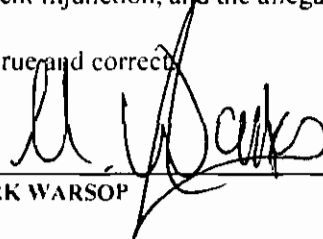
ATTORNEYS FOR PLAINTIFF

STATE OF TEXAS

§
§
§

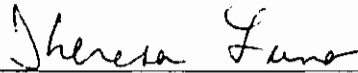
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared MARK WARSOP, who after being by me first duly sworn, stated and deposed that he is the Chief Executive Officer of PANINI AMERICA, INC., Plaintiff in the above entitled and numbered cause, and that he has read the above and foregoing Plaintiff's Original Petition and Verified Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction, and the allegations contained therein are based on his personal knowledge and are true and correct.



MARK WARSOP

SUBSCRIBED AND SWORN TO BEFORE ME on this 21st day of February, 2012.



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

EXHIBIT “1”

AGREEMENT

This license agreement (this "Agreement"), dated as of January 1, 2011, is by and between **K Durant Enterprises, LLC** ("Company") for services of **Kevin Durant**, an individual ("Player"), and **Panini America, Inc.**, a Delaware Corporation and **Panini Authentic**, a division of Panini America, Inc. (individually and collectively, "Panini"). This Agreement relates to Company's provision of the participation by Player in Panini's trading and collectible card products of all shapes, sizes, mediums, and compositions, including, but not limited to, collectible & trading card games as set forth below.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of License.** During the Term, as defined below, of this Agreement, and provided that Panini is not in breach of any provision hereof and has paid all amount payable to Company hereunder, Company hereby grants to Panini the exclusive license (the "License") to use Player's name, approved nicknames, approved likeness, approved photograph, approved picture, approved biography, statistics, game-used equipment, approved image and approved signature (collectively, referred to hereinafter as the "Attributes") in the Territory, as defined below, in and on (a) trading cards, flats and stickers of all shapes, sizes, formats, mediums, and compositions, including those using stickers, number pieces, and letters (collectively, referred to hereinafter as the "Cards"); and (b) items used by Player in games ("Game-Used Memorabilia"), which will be produced and distributed and sold or given away (as limited in this Agreement) by Panini. Notwithstanding anything else herein (a) Panini's exclusive rights with respect to Game-Used Memorabilia shall be limited to such items used in games, and shall not include the products themselves. For purposes of this Agreement, "Territory" means worldwide. Subject to Company's approval in each instance, the License also includes the right to use the Attributes for signed memorabilia and collectible products ("Approved Products"), which may include: jerseys (home, road, All-Star, USA Basketball, and Texas), basketballs, shoes, art, photos (framed and unframed) in various sizes as well as any other item mutually approved in writing by both parties. Panini will be solely responsible for securing the rights, at Panini's sole expense, to use any trademarks, trade names, materials and other third party authorizations necessary for manufacture, distribution, marketing and sale of the Cards, Game-Used Memorabilia and Approved Products under this Agreement, including but not limited to trademarks owned or licensed by the NBA, USA Basketball or the University of Texas. The License grant specifically includes the right to utilize the Attributes on and in connection with the sale and promotion of Cards and in and on any advertising, packaging, solicitation, and promotional items for the Cards, subject to the approval and other provisions of this Agreement. Notwithstanding anything else herein, Panini shall ensure that use of the Attributes does not include any direct or indirect endorsement of any product, product line, service, entity, business, event or charity other than the Cards, Game-Used Memorabilia and Approved Products themselves. All use of the Player's Attributes under this Agreement is subject to Company's review and prior written approval. Company reserves all rights in the Attributes not specifically granted to Panini herein. Any approval by Company required under this Agreement may be given by Company's representative specifically identified and authorized in writing by Company to provide such approval.
2. **Services.** Provided that Panini is not in breach of this Agreement and has paid all amounts payable hereunder Company will provide the following services of Player (the "Services") during the Term of this Agreement:
 - a. **Trading Card Autographs.** During the Term, Company shall ensure that Player provides to Panini a maximum of 7,500 autographs on Cards. Company agrees that Player shall autograph the Cards within two (2) weeks of receipt of Cards by Company or during a mutually agreed up signing session(s), subject to Player's professional commitments. Company agrees that Player will autograph the Cards with a signature substantially similar to Player's legal signature, to include his first and last name. For the purposes of this Agreement, it is mutually agreed upon by the parties that Company will be deemed to have received the Cards upon confirmation of delivery (e.g., personal delivery, overnight courier delivery confirmation). Company agrees to sign and return an Affidavit certifying and verifying the authenticity of Player's autographs on the Cards. All costs (including, without limitation, shipping) related to Player's signing of the Cards will be the sole responsibility of Panini. Upon reasonable request by Panini, Player agrees to sign, at no cost to Panini, an additional number of cards or stickers (5% to 10% depending on volume)

Confidential

20. Notices to Company shall be addressed c/o Eric Goodwin, Goodwin Sports Management, 1114 Post Avenue, Seattle, WA 98101. A courtesy copy of any notice to Company shall be provided to Keven J. Davis, Esq., Garvey Schubert Barer, 100 Wall Street, 20th Floor, New York, New York 10005.

22. **Relationship of the Parties.** No provision of this Agreement creates a partnership, joint venture or employment relationship between the parties or makes a party the agent of the other party for any purpose. No party to this Agreement has authority to bind, to contract in the name of, or to create a liability for, the other party and no party shall hold itself out as having authority to do the same.
23. **Limitation of Liability.** Except for each party's indemnity obligations with respect to third party claims, suits or demands, and any damages, liabilities, costs and expenses resulting therefrom, neither party shall be liable to the other party or any other person or entity for any loss of revenue, loss of goodwill, indirect, incidental, consequential, punitive or special damages of any kind or nature whatsoever relating to this Agreement or the transactions contemplated hereby, regardless of whether such party has been advised of the possibility of such damages or if such damages were reasonably foreseeable. Company's total cumulative liability under or in relation to this Agreement shall not exceed the amount actually paid by Panini hereunder.
24. **Counterparts.** This Agreement may be executed in any number of separate counterparts (including facsimile or .pdf), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, notwithstanding that all parties are not signatory to the original or the same counterpart, provided that no provision of this Agreement shall become effective and binding unless and until all parties have duly executed and delivered a counterpart of this Agreement, at which time this Agreement shall then become effective and binding as of the date first above written. Any signed counterpart of this Agreement that is delivered by facsimile or .pdf transmission shall be deemed to be executed and delivered, for all purposes hereof.

BY SIGNING HEREUNDER, COMPANY AND PANINI AGREE TO ALL OF THE TERMS OF THE AGREEMENT AS SET FORTH ABOVE.

K DURANT ENTERPRISES, LLC

BY: 

NAME: KEVIN DURANT

DATE: 12/20/11

PANINI

BY: 

NAME: M. LASOP

TITLE: CEO

DATE: 12/22/11

EXHIBIT “2”

William Toles

From: Brian Bayne <[REDACTED]>
Sent: Thursday, February 09, 2012 6:06 PM
To: Mark Warsop (Panini America)
Subject: FW: KevinDurantSigs

From: Joe White
Sent: Thursday, February 09, 2012 6:02 PM
To: Brian Bayne
Subject: FW: KevinDurantSigs

From: Brian C. Gray [REDACTED]
Sent: Thursday, July 21, 2011 12:05 PM
To: Joe White
Subject: RE: KevinDurantSigs

[REDACTED] now best

From: Joe White [mailto:[REDACTED]]
Sent: Thursday, July 21, 2011 11:45 AM
To: Brian C. Gray
Subject: RE: KevinDurantSigs

You have a few minutes for a quick call with Brian Bayne and myself? Lmk best number to call you on.

From: Brian C. Gray [mailto:[REDACTED]]
Sent: Thursday, July 21, 2011 11:23 AM
To: Joe White
Subject: FW: KevinDurantSigs

Here is a sample... Kevin Durant Stickers

We have 750 stickers available at \$35. (I paid \$30, so there is no room to negotiate)

I am giving you guys first shot. I know UD needs stickers to fill old redemptions, but I figured this was a great way to reach out and do something positive with you guys.

Let me know asap.
BG

William Toles

From: Brian Bayne <[REDACTED]>
Sent: Thursday, February 09, 2012 6:03 PM
To: Mark Warsop (Panini America)
Subject: FW: KevinDurantSigs
Attachments: sig1.JPG

fyi

From: Brian Bayne
Sent: Monday, July 25, 2011 11:39 AM
To: [REDACTED]
Cc: Joe White
Subject: RE: KevinDurantSigs

Hey Brian

I hope this finds you well. We discussed the Kevin Durant signatures internally and feel there is really no use for them on our end. They don't come with a verified affidavit and they are also on Upper Deck holograms. Given the timing and location you spoke of it seems that the holograms were signed during his contract with UD and hence should have only been used during that stated period. It would be fairly troubling to see these holograms show up in the marketplace after we've invested in an exclusive agreement with Kevin.

Please don't hesitate to contact me if you want to discuss further.

Best regards,

Brian

Brian Bayne | Memorabilia Business Manager
Panini America, Inc.
Direct: [REDACTED] | Fax: [REDACTED]
5325 FAA Blvd. Suite 100 | Irving, TX 75061
Email: [REDACTED]



From: Brian C. Gray [REDACTED]
Sent: Thursday, July 21, 2011 11:23 AM
To: Joe White
Subject: FW: KevinDurantSigs

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Let me know asap.

BG

Handwritten cursive letter 'R' on a lined background.

Handwritten cursive letter 'R' on a lined background.

Handwritten cursive letter 'R' on a lined background.

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Handwritten cursive letter 'R' on a lined background.

Handwritten cursive letter 'R' on a lined background.

EXHIBIT “3”

CAUSE NO. _____

PANINI AMERICA, INC.	§	IN THE DISTRICT COURT
VS	§	DALLAS COUNTY, TEXAS
LEAF TRADING CARDS AND	§	
BRIAN GRAY	§	_____ JUDICIAL DISTRICT

AFFIDAVIT OF BRIAN BAYNE

STATE OF TEXAS	§
COUNTY OF DALLAS	§

BEFORE ME, the undersigned authority, personally appeared BRIAN BAYNE, who, being by me duly sworn, deposed as follows:

"My name is Brian Bayne. I am over eighteen (18) years of age and am competent to give this Affidavit.

I have personal knowledge of these matters because I am the Business Manager for Panini Authentic. I have held this position since August, 2010.

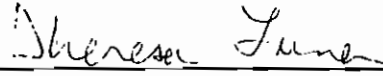
I spoke with Brian Gray of Leaf Trading Cards on July 21, 2011 regarding the Kevin Durant autograph signature stickers. Mr. Gray advised me that I needed to purchase these stickers to "keep them off the market." Additionally, Mr. Gray advised me that it would be in the best interest of Panini to purchase the Kevin Durant autograph signature stickers. Mr. Gray later advised me during the conversation on July 21, 2011 that in the event Panini would not purchase the Kevin Durant autograph signature stickers, he would "release the stickers into the market for free."

Further, Affiant sayeth naught."


BRIAN BAYNE

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of February, 2012.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS