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17 Attorneys for Plaintiff GABRIEL
18 LAKATOSH on behalf of himself and
19 all others similarly situated

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

22 GABRIEL LAKATOSH, on behalf of
23 himself and all others similarly situated,

24 Plaintiff,

25 v.

26 TECHTRONIC INDUSTRIES
27 COMPANY, LTD.; MILWAUKEE
28 ELECTRIC TOOL CORPORATION;
THE HOME DEPOT, INC.; and DOES
1-10, inclusive,

Defendants.

Case No. 2:18-cv-5527

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR:**

**(1) VIOLATION OF CALIFORNIA
CONSUMERS LEGAL REMEDIES
ACT (Cal. Civ. Code §§ 1750, *et seq.*)**

**(2) VIOLATION OF CALIFORNIA
FALSE ADVERTISING LAW (Cal.
Bus. & Prof. Code § 17500, *et seq.*)**

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**(3) VIOLATION OF STATE
CONSUMER
PROTECTION/FRAUD ACTS**

(4) NEGLIGENCE PER SE

(5) FRAUD

**(6) INTENTIONAL FAILURE TO
DISCLOSE OR CONCEALMENT**

**(7) NEGLIGENT FAILURE TO
DISCLOSE OR CONCEALMENT**

(8) UNJUST ENRICHMENT

**(9) PERMANENT INJUNCTIVE
RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiff, Gabriel Lakatosh, on behalf of himself and all others similarly
2 situated, alleges as follows upon personal knowledge as to Plaintiff’s own conduct
3 and on information and belief as to all other matters based on an investigation by
4 counsel, such that each allegation has evidentiary support or is likely to have
5 evidentiary support upon further investigation and discovery:

6 **I. INTRODUCTION**

7 1. Techtronic Industries Company, Ltd. (“Techtronic”), through its
8 Milwaukee brand, manufactures, markets and sells a popular model of utility knife
9 known as Milwaukee Fastback “Press and Flip” Knife (“Milwaukee Fastback
10 Product(s)”). According to Milwaukee’s own publicity pieces, the Milwaukee
11 Fastback Products are “[d]esigned to activate the blade 3X faster than a 2-handed
12 opening [utility knife].” The resulting “easy activation” confirms Techtronic’s
13 “relentless commitment to provide innovative solutions to the end user that will
14 increase productivity.”

15 2. The glaring trouble with Milwaukee Fastback Products, however, is
16 that they are illegal to possess or carry in many jurisdictions. Defendants
17 nevertheless market and sell Milwaukee Fastback Products virtually everywhere,
18 including through Defendant The Home Depot, Inc. stores and various other retail
19 outlets, including Amazon.com and other online vendors.

20 3. Defendant The Home Depot, Inc., sells its own house-branded knives
21 under the “Husky” name, that operate similarly to the Milwaukee Fastback
22 Products, and are similarly illegal in many jurisdictions as set out herein.

23 4. Collectively, the Milwaukee Fastback Products and the similar Husky
24 knives, are referred to herein as the “Illegal Gravity Knives.” Figures 1, 2, 3 and 4
25 show examples of the Illegal Gravity Knives.

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Figure 1

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Figure 2

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Figure 3

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Figure 4

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1 **II. PARTIES**

2 5. Plaintiff is a California resident, residing in Calabasas, California
3 91302, who possesses two or more Milwaukee Fastback Products purchased from a
4 The Home Depot, Inc. retail store within the boundaries of California. Figures 1
5 and 2 are pictures of Plaintiff’s knives and their packaging for which he paid
6 \$16.39 and \$10.92, respectively. He purchased them at The Home Depot, Inc. on
7 November 1, 2017.

8 6. Techtronic is a Hong Kong-based investment holding company that
9 designs, manufactures, and markets power and hand tools, outdoor power
10 equipment, and floor care appliances for consumers and professional and industrial
11 users in the home improvement, repair, and construction industries.

12 7. Milwaukee Electric Tool Corporation (“Milwaukee”) is a brand
13 subsidiary of Techtronic. Milwaukee’s headquarters are located at 13135 West
14 Lisbon Road, Brookfield, Wisconsin 53005.

15 8. The Home Depot, Inc. (“The Home Depot”) is a nationwide home
16 improvement retailer that sells hardware and other goods, including those under its
17 own “Husky” brand name, to residential and business consumers throughout the
18 United States, including California. The Home Depot’s headquarters are located at
19 2455 Paces Ferry Road, N.W., Atlanta, Georgia 30339.

20 9. Plaintiff is unaware of the true names and capacities of individuals
21 and/or entities sued herein under the fictitious names DOES 1 through 10,
22 inclusive, or, to the extent that the names of such individuals or entities may be
23 known to Plaintiff, Plaintiff does not know whether a viable cause of action lies as
24 against such individuals or entities, or Plaintiff is unable to allege the elements of
25 such a cause of action at this time, prior to discovery. Plaintiff reserves the right to
26 amend the instant Complaint to allege the true names and capacities of such
27 fictitiously-named defendants when the same become known or when it has been
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1 ascertained with reasonable certainty that a cause of action hereunder can be
2 satisfactorily stated and maintained against them.

3 10. Plaintiff is informed and believes, and based upon such information
4 and belief alleges, that each of the Defendants named in this Complaint, including
5 DOES 1 through 10, inclusive, is, and at all times relevant hereto was, the agent,
6 servant, employee, and/or joint venturer of each of the other Defendants and that
7 each Defendant was acting within the course and scope of his, her, or its authority
8 as an agent, servant, employee, and/or joint venturer. Consequently, all Defendants
9 are jointly and severally liable to Plaintiff and Class members for the damages
10 sustained as alleged herein.

11 11. As used herein, the term “Defendants” shall mean to refer, unless
12 otherwise specified, collectively to Defendants Techtronic, The Home Depot,
13 Milwaukee, and DOES 1 through 10, inclusive.

14 **III. JURISDICTION AND VENUE**

15 12. The Court has jurisdiction over this action pursuant to 28 U.S.C.
16 section 1332(d)(2) because the amount in controversy exceeds the sum of
17 \$5,000,000 exclusive of interest and costs, and because it involves citizens of
18 different states. Each Defendant is subject to jurisdiction in this judicial district, as
19 it is in any and all federal jurisdictions in which Defendants sell the Illegal Gravity
20 Knives.

21 13. Venue for the claims against Defendants is proper in this judicial
22 district pursuant to 28 U.S.C. section 1391 because a substantial part of the events
23 giving rise to the liability of Defendants occurred within this district, because
24 Defendants have received substantial compensation from doing business in this
25 district, and because they are subject to the Court’s personal jurisdiction with
26 respect to this action.

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1 **IV. GENERAL FACTUAL ALLEGATIONS**

2 14. Techtronic, through Milwaukee, manufactures in China and sells in the
3 United States a series of foldable knives under the brand name “Fastback.” Some
4 Fastbacks, referred to generally as “folding knives,” are more akin to a traditional
5 folding-blade pocketknife, while others are described as “utility knives.” The
6 Milwaukee Fastback Products, and the similar Husky knives, may be activated
7 (meaning the blade is exposed and locked in an open, operable position) by holding
8 the knife in one hand, cocking the wrist, depressing a button in the handle, and
9 quickly uncocking or flipping the wrist outward.

10 15. Unwary consumers are never informed, however, that the Illegal
11 Gravity Knives are illegal to possess or carry in many jurisdictions, including
12 California. Indeed, many states outlaw possession and/or concealed carry of
13 “switchblade” or “gravity” knives, which are essentially knives that open with the
14 help of spring or other mechanical assistance, or which open freely under the force
15 of gravity or inertia. Milwaukee Fastback Products manufactured by Techtronic,
16 marketed and distributed by Milwaukee, and sold to the public by The Home Depot
17 alongside its own similar Husky knives, squarely fit the gravity knife definition in
18 all states that outlaw their possession.

19 16. Milwaukee Fastback Products are a profitable product line for
20 Techtronic and Milwaukee.

21 17. Defendants generate considerable profits from the sale of Illegal
22 Gravity Knives due in large part to their conscious decision to manufacture,
23 distribute and offer for sale knives capable of opening and locking into the
24 functional position without first overcoming a detent or other restrictive mechanism.

25 18. Not only does this deliberate design make the Illegal Gravity Knives
26 cheaper to produce since no detent or other restrictive mechanism is used, it makes
27 them “cool” which provides a significant marketing advantage for Defendants over
28 their competitors.

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1 19. In a 2013 press release introducing the Milwaukee Fastback Product
2 known as the “Fastback II Utility Knife” featuring magnetic blade storage,
3 Milwaukee touted that the new Fastback II was “[d]esigned to activate the blade 3X
4 faster than a 2-handed opening,” and “features a Press & Flip-one handed blade
5 opening for easy activation.”

6 20. The Home Depot is one of the largest, if not the largest, retailer of
7 Milwaukee products in the United States. As such, it derives significant profits from
8 the retail sale of Milwaukee Fastback Products and its Husky knives – in all states
9 but one.

10 21. Notably, The Home Depot does not offer for sale Illegal Gravity
11 Knives at any of its New York stores due to a crackdown on illegal switchblade and
12 gravity knives conducted by the district attorney of Manhattan in 2010. In exchange
13 for an agreement to stop selling the illegal knives – and forfeit past profits from
14 sales of them – the district attorney agreed not to pursue criminal charges against
15 The Home Depot for such sales.

16 22. Since The Home Depot undeniably knows of the illegality of the Illegal
17 Gravity Knives in certain jurisdictions, its continued sales of the products is
18 inexcusable and unconscionable.

19 **V. ILLEGALITY OF THE GRAVITY KNIVES**

20 23. The Federal Switchblade Act, 15 U.S.C. § 1241, *et seq.*, was enacted by
21 Congress in 1958. It regulates the manufacture of switchblade knives and their
22 introduction into interstate commerce. While the federal act has no application to
23 many individual consumers, it defines a “switchblade knife” as any knife having a
24 blade which opens automatically by, (1) hand pressure applied to a button or other
25 device in the handle of the knife, or (2) operation of inertia, gravity or both. 15
26 U.S.C. § 1241(b); *see also* 19 C.F.R. § 12.95.

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1 24. California, Delaware, Hawaii, Louisiana, New Jersey, New Mexico,
2 New York and Washington have statutes that use similar definitions to outlaw the
3 possession of these particular types of knives. For example:

4 a. In New York, “A person is guilty of criminal possession of a
5 weapon in the fourth degree when . . . [h]e or she possesses any
6 firearm, electronic dart gun, electronic stun gun, gravity knife,
7 switchblade knife” N.Y. Penal Law § 265.01. The New
8 York statute defines “gravity knife” as “any knife which has a
9 blade which is released from the handle or sheath thereof by the
10 force of gravity or the application of centrifugal force”
11 N.Y. Penal Law § 265.00(5);

12 b. In California, “[e]very person who does any of the following
13 with a switchblade knife having a blade two or more inches in
14 length is guilty of a misdemeanor: (a) Possesses the knife in the
15 passenger’s or driver’s area of any motor vehicle in any public
16 place or place open to the public[;] (b) [c]arries the knife upon
17 the person[;] [or] (c) [s]ells, offers for sale, exposes for sale,
18 loans, transfers, or gives the knife to any other person. Cal.
19 Penal Code § 21510. California Penal Code section 17235
20 provides that a “switchblade knife” refers to “a knife having the
21 appearance of a pocketknife and includes a spring-blade knife,
22 snap-blade knife, gravity knife, or any other similar type knife,
23 the blade or blades of which are two or more inches in length
24 and which can be released automatically by a flick of a button,
25 pressure on the handle, flip of the wrist or other mechanical
26 device, or is released by the weight of the blade or by any type
27 of mechanism whatsoever.” Cal. Penal Code § 17235;
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- c. According to Delaware law, a person is guilty of unlawfully possessing a switchblade knife when the person has in possession a knife where the blade is released by a spring mechanism or by gravity. Del. Code Ann. tit. 11, §§ 1442, 1446, 222(5);
- d. A person violates the prohibition on switchblades in Hawaii when the person possesses “any switchblade knife, being any knife having a blade which opens automatically (1) by hand pressure applied to a button or other device in the handle of the knife, or (2) by operation of inertia, gravity, or both...” Haw. Rev. Stat. § 134-52;
- e. In Louisiana, a person illegally carries a weapon who possesses “any switchblade knife, spring knife or other knife or similar instrument having a blade which may be automatically unfolded or extended from a handle by the manipulation of a button, switch, latch or similar contrivance located on the handle.” La. Rev. Stat. 14:95 (2013);
- f. A person in New Mexico unlawfully possesses a dangerous weapon who possesses “any knife having a blade which opens or falls or is ejected into position by the force of gravity or by any outward or centrifugal thrust or movement.” N.M. Stat. Ann. 1978, §§ 30-7-8, 30-7-2, 30-1-12;
- g. A person is guilty of carrying a dangerous weapon who possesses “any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement” in Washington. Wash. Rev. Code Ann. 9.41.250; and

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1 h. In New Jersey a person unlawfully carries a prohibited weapon
2 who “has in his possession any gravity knife ... without any
3 explainable lawful purpose. ...” N.J. Stat. Ann. §§ 2C:39-1(h),
4 39-3(e).

5 25. Plaintiff has conferred with a qualified expert and confirmed the blade
6 of all the Illegal Gravity Knives, when measured from the tip of the blade to the
7 closest point on the knife’s hilt, exceeds 2” in length. More specifically, the blade
8 includes the entire portion of the knife that swings out from the handle, including
9 the portion Defendants refer to as a “holder.” Plaintiff has also confirmed with that
10 expert that there would be probable cause for a law enforcement official to arrest a
11 person who was caught in California with one of the Illegal Gravity Knives.

12 26. Moreover, individuals residing in states where the Illegal Gravity
13 Knives are not specifically outlawed can freely travel to any of the eight above-
14 states in which the possession or concealed carry of the products will render the
15 possession or carry illegal.

16 27. The vast majority of states have consumer protection statutes that
17 afford private rights of action and other protections to consumers who are
18 unwittingly harmed by the unfair and deceptive practices of advertising and
19 offering illegal goods for purchase in the marketplace.

20 28. Members of the Class who do not know of the illegality of the knives
21 continue to purchase them as they are still being marketed and sold by Defendants.

22 **VI. CLASS ACTION ALLEGATIONS**

23 29. Plaintiff brings this action individually and as a class action pursuant
24 to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on
25 behalf of himself and individuals who fall within the following class:

26 All persons or entities who are residents of California, Delaware,
27 Hawaii, Louisiana, New Jersey, New Mexico, New York and
28

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1 Washington, who have purchased Illegal Gravity Knives manufactured,
2 marketed, distributed or sold by any of the Defendants.

3 30. Subject to information that may be obtained through further
4 investigation and discovery, the Class definition may be modified, expanded,
5 narrowed or divided into subclasses by amended complaint.

6 31. Specifically excluded from the Class are Defendants, their officers,
7 directors, agents, trustees, parents, children, corporations, trusts, representatives,
8 employees, principals, servants, partners, joint-venturers, or entities controlled by
9 Defendants, and their heirs, successors, assigns, or other persons or entities
10 related to or affiliated with Defendants and/or its officers and/or directors, or any
11 of them.

12 32. Also specifically excluded from the Class is the Judge assigned to this
13 action, or any member of the Judge's immediate family.

14 33. The individual Plaintiff is a member of the Class he seeks to
15 represent.

16 34. This lawsuit is suitable for class treatment because there is a well-
17 defined community of interest among Class members and the proposed Class is
18 numerous and ascertainable.

19 35. **Numerosity:** The persons in the Class are so numerous as to make
20 joinder impractical.

21 36. **Commonality:** Defendants have acted or refused to act on grounds
22 generally applicable to the Class. The Plaintiff and the Class he seeks to represent
23 are all purchasers of Illegal Gravity Knives manufactured, marketed and sold by
24 Defendants. Due to the manufacture, marketing and sale of Illegal Gravity Knives,
25 Defendants have represented that such goods are of a particular standard, quality,
26 or grade when they are of another. Particularly, by manufacturing, marketing and
27 selling the products, Defendants expressly represent that the sale and possession of
28 the products is legal – it is not. This practice, which has caused damage to Plaintiff

1 and the Class, is in direct violation of state consumer protection statutes and other
2 applicable laws.

3 37. Thus, there are questions of law and fact common to all of the claims
4 of the Plaintiff and all Class members including, but not limited to, the following,
5 which are apt to drive the resolution of the litigation:

- 6 a. Whether Defendants violated the California Consumers Legal
7 Remedies Act, Cal. Civ. Code § 1750 *et seq.*;
- 8 b. Whether Defendants violated the California Unfair Competition
9 Law, Cal. Bus. & Prof. Code § 17200 *et seq.*;
- 10 c. Whether Defendants violated California Penal Code § 21510(c)
11 by exposing for sale in California the Illegal Gravity Knives;
- 12 d. Whether Defendants intentionally and knowingly falsely
13 misrepresented, concealed, suppressed and/or omitted material
14 facts including the fact that the Illegal Gravity Knives are
15 unsalable due to their being illegal;
- 16 e. Whether Defendants negligently falsely misrepresented or
17 omitted material facts including the fact that the Illegal Gravity
18 Knives are unsalable due to their being illegal;
- 19 f. Whether Defendants made material misrepresentations and/or
20 omissions concerning the standard, quality or grade of the
21 Illegal Gravity Knives;
- 22 g. Whether Defendants were unjustly enriched by their conduct;
- 23 h. Whether Defendants violated the Delaware Unfair & Deceptive
24 Trade Practices Act, Del. Code Ann. tit. 6, § 2511, *et seq.*;
- 25 i. Whether Defendants violated the Hawaii Consumer Protection
26 Act, Haw. Rev. Stat. § 480-2, *et seq.* and/or Hawaii Deceptive
27 Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.*;
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- 1 j. Whether Defendants violated the Louisiana Consumer
- 2 Protection Act, La. Rev. Stat. Ann. § 51:1401, *et seq.*;
- 3 k. Whether Defendants violated the New Jersey Consumer
- 4 Protection Act, N.J. Rev. Stat. § 56:8-1, *et seq.*;
- 5 l. Whether Defendants violated the New Mexico Consumer
- 6 Protection Act, N.M. Stat. Ann. § 57-12-1, *et seq.*;
- 7 m. Whether Defendants violated the New York Consumer
- 8 Protection Act, N.Y. Gen. Bus. Law § 349, *et seq.*;
- 9 n. Whether Defendants violated the Washington Consumer
- 10 Protection Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- 11 o. Whether damages, restitution, equitable, injunctive,
- 12 compulsory, or other relief is warranted; and
- 13 p. Whether Plaintiff and members of the Class have sustained
- 14 damages as a result of Defendants' conduct, and, if so, what is
- 15 the appropriate measure of damages.

16 The questions of law and fact common to the members of the Class predominate
17 over any questions affecting only individual members and can be resolved in one
18 action for all members of the Class.

19 38. **Typicality:** Plaintiff's claims are typical of the claims of the Class
20 members. Plaintiff's claims arise from Defendants' illegal marketing and sale of
21 Illegal Gravity Knives that are, in fact, illegal to possess in numerous jurisdictions.
22 His claims are typical because he, like every member of the Class, purchased an
23 Illegal Gravity Knife and had Plaintiff known of the illegality of the products, he
24 would not have purchased them.

25 39. **Notice:** Plaintiff contemplates that the nature of the notice to be
26 provided to Class members can be in the form of e-mail, mail, and published notice
27 based, in part, on records kept by Defendants.

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1 40. **Adequacy of Representation:** The representative Plaintiff will fairly
2 and adequately protect the interests of the Class. Plaintiff has no interests that are
3 adverse to the interests of the other Class members. Plaintiff’s attorneys are
4 experienced in class action litigation.

5 41. **Superiority:** A class action is superior to any other available method
6 for the fair and efficient adjudication of this controversy. Joinder of all members of
7 the Class is impractical. Class action treatment will permit a large number of
8 similarly situated persons to prosecute their common claims in a single forum
9 simultaneously, efficiently, and without the unnecessary duplication of effort and
10 expense that numerous individual actions would engender. The prosecution of
11 separate actions by individual members of the Class would create a risk of
12 inconsistent or varying adjudications and would establish incompatible standards
13 of conduct for Defendants and adjudications with respect to individual members
14 of the Class would, as a practical matter, be dispositive of the interest of the other
15 members not parties to the adjudications, or substantially impair their ability to
16 protect their interests. Were this action to be pursued by individual plaintiffs, each
17 case could result in different courts reaching conflicting decisions regarding Class
18 member claims.

19 42. Furthermore, as each of the individual Class members has little or no
20 ability to pay for litigation costs, the expenses and burden of individual litigation
21 would make it difficult or impossible for individual members of the Class to
22 redress the wrongs done to them, while an important public interest will be served
23 by addressing the matter as a class action. The cost to the court system of
24 adjudication of such individualized litigation would be substantial. Individual
25 litigation would also present the potential for inconsistent or contradictory
26 judgments. The prosecution of this litigation as a class action presents no unusual
27 difficulty in the management of this action.

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1 43. Class action status is warranted under Rule 23(b)(3) because questions
2 of law or fact common to the members of the Class predominate over any questions
3 affecting only individual members, and a class action is superior to other available
4 methods for the fair and efficient adjudication of this controversy.

5 44. The Class may also be certified under Rule 23(b)(1)(A) and (B)
6 because the prosecution of separate actions by individual members of the Class
7 would create a risk of inconsistent or varying adjudications with respect to
8 individual members of the Class, which would establish incompatible standards of
9 conduct for Defendants, would be dispositive of the interests of nonparties to the
10 individual adjudications, and would substantially impair the ability of such
11 nonparties to protect their interests.

12 45. The Class may also be certified under Rule 23(b)(2) because
13 Defendants have acted on grounds generally applicable to the Class, thereby
14 making it appropriate to award final injunctive relief or corresponding declaratory
15 relief with respect to the Class.

16 46. The interest of members within the Class in individually controlling
17 the prosecution of separate actions is theoretical and not practical. The members of
18 the Class have a high degree of similarity and are cohesive, and Plaintiff anticipates
19 no difficulty in the management of this matter as a class action.

20 **FIRST CAUSE OF ACTION**

21 **Violation of California Consumers Legal Remedies Act**

22 **Cal. Civ. Code §§ 1750, *et seq.***

23 **(By Plaintiff Against All Defendants)**

24 47. Plaintiff repeats and realleges each and every allegation contained in
25 the paragraphs above as though fully set forth herein.

26 48. Defendants have represented that Illegal Gravity Knives have approval
27 and/or are of a certain standard, quality, or grade (*i.e.*, not illegal), when they are,
28 in fact, illegal in California.

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1 49. Defendants’ representations and/or concealments are false,
2 misleading, and/or deceptive acts within the meaning of California consumer
3 protection statutes including the Consumers Legal Remedies Act.

4 50. Plaintiff and members of the Class reasonably relied on the false,
5 misleading, and/or deceptive representations and concealments of material facts by
6 Defendants.

7 51. Plaintiff and Class members are “consumers” within the meaning of
8 California Civil Code section 1761(d).

9 52. Defendants are “persons” within the meaning of California Civil Code
10 section 1761(c).

11 53. Plaintiff’s and each Class member’s purchase of an Illegal Gravity
12 Knife constitutes a “transaction” within the meaning of California Civil Code
13 section 1761(e).

14 54. The Illegal Gravity Knives are “goods” within the meaning of
15 California Civil Code section 1761(a).

16 55. Defendants’ statements regarding the Illegal Gravity Knives violated
17 the Consumers Legal Remedies Act, Cal. Civ. Code section 1750, *et seq.*, in at
18 least the following respects:

19 a. they represented that Illegal Gravity Knives had characteristics
20 and benefits (*i.e.*, their legality) that they did not actually have, in violation of
21 Section 1770(a)(5);

22 b. they represented that Illegal Gravity Knives are of a particular
23 standard, quality, or grade (*i.e.*, their legality) that they are not, in violation of
24 Section 1770(a)(7); and

25 c. they advertised Illegal Gravity Knives with an intent not to sell
26 them as advertised (*i.e.*, a legal product), in violation of Section 1770(a)(9).

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1 56. Defendants falsely represented and/or concealed material facts
2 regarding Illegal Gravity Knives, information that is relied upon by consumers,
3 including Plaintiff and Class members, in making purchasing decisions.

4 57. Defendants’ statements or omissions regarding the Illegal Gravity
5 Knives materially and adversely affected the purchasing decisions of Plaintiff and
6 Class members. Had Plaintiff and Class members known of the illegality of the
7 products, they would not have purchased them.

8 58. Defendants’ affirmative misrepresentations and material omissions,
9 and their publication of these material inaccuracies regarding the Illegal Gravity
10 Knives constitute unfair, deceptive, and misleading business practices in violation
11 of California Civil Code section 1770(a).

12 59. Plaintiff, on behalf of himself and on behalf of the California Sub-
13 Class, seeks injunctive relief, only, under California Civil Code section 1780.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California False Advertising Law**

16 **Cal. Bus. & Prof. Code § 17500, *et seq.***

17 **(By Plaintiff Against All Defendants)**

18 60. Plaintiff repeats and realleges each and every allegation contained in
19 the paragraphs above as though fully set forth herein.

20 61. California Business and Professions Code section 17500 states: “It is
21 unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of
22 real or personal property . . . to induce the public to enter into any obligation
23 relating thereto, to make or disseminate or cause to be made or disseminated . . .
24 from this state before the public in any state, in any newspaper or other publication,
25 or any advertising device, . . . or in any other manner or means whatever, including
26 over the Internet, any statement . . . which is untrue or misleading, and which is
27 known, or which by the exercise of reasonable care should be known, to be untrue
28 or misleading.”

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1 62. Defendants engaged in advertising and marketing to the public and
2 offered Illegal Gravity Knives for sale throughout California.

3 63. Defendants caused to be made or disseminated statements throughout
4 California regarding the Illegal Gravity Knives with intent to directly or indirectly
5 induce consumers like Plaintiff and Class members to purchase them.

6 64. Defendants' statements regarding the Illegal Gravity Knives were
7 false, misleading, and likely to deceive the public and/or have deceived the public
8 by falsely representing the characteristics of them, as set forth above.

9 65. At the time Defendants made and disseminated the statements alleged
10 herein, Defendants knew or should have known that the statements were untrue or
11 misleading, and Defendants acted in violation of California Business and
12 Professions Code section 17500.

13 66. Defendants' statements regarding the Illegal Gravity Knives were
14 material to Plaintiff's and Class members' decision to purchase them, and Plaintiff
15 and Class members reasonably relied on Defendants' statements.

16 67. Had Plaintiff and Class members known the illegality of the Illegal
17 Gravity Knives, they reasonably would not have purchased them.

18 68. Plaintiff and members of the Class suffered an injury in fact, including
19 the loss of money or property, as a result of Defendants' unfair, unlawful or
20 deceptive practices.

21 69. In purchasing his knife Plaintiff relied on the misrepresentations
22 and/or omissions of Defendants with respect to it as set forth herein. Defendants'
23 representations turned out not to be true because the knife was illegal to possess
24 and had Plaintiff known this, he would not have purchased it.

25 70. Plaintiff did not receive the benefit of his bargain and one way to
26 partially measure this is by the moneys paid at the time of sale.

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1 71. Plaintiff, on behalf of himself and on behalf of the Class, seeks
2 restitution, injunctive relief, and all other allowable relief under Business and
3 Professions Code section 17500.

4 **THIRD CAUSE OF ACTION**

5 **Violation of State Consumer Protection/Fraud Acts**

6 **(By Plaintiff Against All Defendants)**

7 72. Plaintiff repeats and realleges each and every allegation contained in
8 the paragraphs above as though fully set forth herein.

9 73. Defendants have represented that Illegal Gravity Knives have approval
10 and/or are of a certain standard, quality, or grade (*i.e.*, not illegal), when they are,
11 in fact, illegal in California, Delaware, Hawaii, Louisiana, New Jersey, New
12 Mexico, New York and Washington.

13 74. Defendants employed unfair, unlawful and deceptive acts or practices,
14 fraud, false pretense, misrepresentations, or concealment, suppression or omission
15 of a material fact with intent that others rely upon such concealment, suppression
16 or omission, in connection with the sale of Illegal Gravity Knives. Defendants
17 knowingly concealed, suppressed and/or omitted material facts regarding the
18 Illegal Gravity Knives and misrepresented the standard, quality or grade of them,
19 which directly caused harm to Plaintiff and members of the Class.

20 75. Defendants actively suppressed the fact that the Illegal Gravity Knives
21 are illegal to possess. Further, Defendants employed unfair, unlawful and
22 fraudulent business practices in selling them to consumers.

23 76. Defendants' unfair, unlawful and fraudulent business practices were
24 likely to deceive a reasonable consumer. Plaintiff and members of the Class had no
25 reasonable expectation that Defendants would manufacture, market and sell Illegal
26 Gravity Knives that were illegal to possess. Defendants had superior knowledge as
27 to the quality and characteristics of the Illegal Gravity Knives and any reasonable
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1 consumer would have relied on Defendants' misrepresentations and omissions as
2 the Plaintiff and members of the Class did.

3 77. Defendants intentionally and knowingly misrepresented and omitted
4 facts regarding the Illegal Gravity Knives with the intent to mislead Plaintiff and
5 members of the Class. Defendants knew, or should have known, that the Illegal
6 Gravity Knives were unsalable and illegal.

7 78. At all relevant times, Defendants' unfair and deceptive acts or
8 practices, affirmative misrepresentations and/or omissions regarding the Illegal
9 Gravity Knives were material to Plaintiff and members of the Class. When Plaintiff
10 and members of the Class purchased Illegal Gravity Knives, they reasonably relied
11 on the reasonable expectation that they were a legal product to possess. Had
12 Defendants disclosed that the Illegal Gravity Knives were illegal, Plaintiff and
13 members of the Class reasonably would not have purchased them. This is because
14 no rational purchaser would subject themselves to the liability attendant to owning
15 the Illegal Gravity Knives and because Defendants would not sell a knife they
16 needed to identify as being illegal to possess in the relevant jurisdictions.

17 79. Defendants have knowingly and willfully engaged in the unfair,
18 unlawful and fraudulent business practices alleged herein. Further, Defendants
19 unconscionably marketed the Illegal Gravity Knives to uninformed consumers in
20 order to maximize profits.

21 80. Defendants' representations are false, misleading, and/or deceptive
22 acts within the meaning of California consumer protection statutes including the
23 California Business and Professions Code section 17200, *et seq.*

24 81. Defendants have engaged in unfair competition or unfair or deceptive
25 acts or practices in violation of Del. Code Ann. tit. 6, § 2511, *et seq.*

26 82. Defendants have engaged in unfair competition or unfair or deceptive
27 acts or practices in violation of Haw. Rev. Stat. § 480-2, *et seq.*; Haw. Rev. Stat. §
28 481A-1, *et seq.*

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1 83. Defendants have engaged in unfair competition or unfair or deceptive
2 acts or practices in violation of La. Rev. Stat. Ann. § 51:1401, *et seq.*

3 84. Defendants have engaged in unfair competition or unfair or deceptive
4 acts or practices in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

5 85. Defendants have engaged in unfair competition or unfair or deceptive
6 acts or practices in violation of N.M. Stat. Ann. § 57-12-1, *et seq.*

7 86. Defendants have engaged in unfair competition or unfair or deceptive
8 acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

9 87. Defendants have engaged in unfair competition or unfair, deceptive or
10 fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*

11 88. Defendants' unfair, unlawful and fraudulent acts and practices have
12 harmed and continue to harm Plaintiff and members of the Class, have negatively
13 affected the public interest, and present a continuing hazard to Plaintiff and
14 members of the Class.

15 89. As a direct result of Defendants' deceptive, unfair, and
16 unconscionable conduct, Plaintiff and members of the Class were injured.

17 90. Plaintiff and members of the Class have been damaged in an amount
18 to be determined at trial.

19 91. Plaintiff and members of the Class seek an order enjoining
20 Defendants' unfair, unlawful, and fraudulent practices and awarding costs,
21 attorneys' fees and restitution, disgorgement of funds, and any other just and
22 proper relief available.

23 **FOURTH CAUSE OF ACTION**

24 **Negligence Per Se**

25 **(By Plaintiff Against All Defendants)**

26 92. Plaintiff repeats and realleges each and every allegation contained in
27 the paragraphs above as though fully set forth herein.

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1 93. Plaintiff and Class members are residents of the following states
2 where there exists a statute, regulation or ordinance making it illegal to possess an
3 Illegal Gravity Knife: California, Delaware, Hawaii, Louisiana, New Jersey, New
4 Mexico, New York and Washington.

5 94. Defendants’ sale of Illegal Gravity Knives in the states where it is
6 illegal to possess them violates the aforementioned statutes, regulations or
7 ordinances.

8 95. The violations were a substantial factor in bringing about the harm
9 complained of herein, to wit, an illegal sale.

10 96. As a direct result of the above, Defendants are negligent as such
11 violations were not excused.

12 97. Plaintiff and the members of the Class were harmed by Defendants’
13 negligence in that they paid for a product that is illegal to possess.

14 **FIFTH CAUSE OF ACTION**

15 **Fraud**

16 **(By Plaintiff Against All Defendants)**

17 98. Plaintiff repeats and realleges each and every allegation contained in
18 the paragraphs above as though fully set forth herein.

19 99. Defendants have failed to disclose or have concealed the material fact
20 that Illegal Gravity Knives are illegal to possess in numerous jurisdictions.

21 100. Defendants failed to disclose or concealed this material fact regarding
22 Illegal Gravity Knives when it knew the material fact, or failed to disclose or
23 concealed the material fact recklessly without any knowledge of the truth.

24 101. The failure to disclose or concealment of the true facts about Illegal
25 Gravity Knives was done with the intent to induce Plaintiff and members of the
26 Class to purchase them.

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1 102. Plaintiff and members of the Class relied upon Defendants to disclose
2 or not conceal the material fact that Illegal Gravity Knives were illegal to possess
3 in some jurisdictions.

4 103. The reliance by Plaintiff and members of the Class that Illegal Gravity
5 Knives were not illegal was reasonable and justified.

6 104. As a direct and proximate result of Defendants concealing the material
7 fact that Illegal Gravity Knives were, in fact, illegal in numerous jurisdictions,
8 Plaintiff and members of the Class have suffered actual damages in an amount to
9 be determined at trial in that they were induced to purchase products they would
10 not have purchased had they known the true facts about the products, they spent
11 money on Illegal Gravity Knives that were not what they were represented to be
12 and that lacked the value and superior quality attributes Defendants represented
13 them to have.

14 **SIXTH CAUSE OF ACTION**

15 **Intentional Failure to Disclose or Concealment**

16 **(By Plaintiff Against All Defendants)**

17 105. Plaintiff repeats and realleges each and every allegation contained in
18 the paragraphs above as though fully set forth herein.

19 106. Defendants have failed to disclose and/or have concealed the material
20 fact that Illegal Gravity Knives are illegal in numerous jurisdictions.

21 107. Defendants failed to disclose or concealed these material facts
22 regarding Illegal Gravity Knives when it knew the products were illegal, and/or
23 failed to disclose or concealed the material facts without any knowledge of the
24 truth.

25 108. The failure to disclose and/or concealment of the true facts about
26 Illegal Gravity Knives was done with the intent to induce Plaintiff and members of
27 the Class to purchase them.
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1 109. Plaintiff and members of the Class relied upon representations that
2 Illegal Gravity Knives were not illegal.

3 110. The reliance by Plaintiff and members of the Class that Illegal Gravity
4 Knives were not illegal was reasonable and justified.

5 111. As a direct and proximate result of Defendants failing to disclose
6 and/or concealing the material fact that Illegal Gravity Knives were, in fact, illegal
7 in numerous jurisdictions, Plaintiff and members of the Class have suffered actual
8 damages in an amount to be determined at trial in that they were induced to
9 purchase products they would not have purchased had they known the true facts
10 about the products, *i.e.*, they spent money on Illegal Gravity Knives that were
11 illegal to possess or carry.

12 **SEVENTH CAUSE OF ACTION**

13 **Negligent Failure to Disclose or Concealment**

14 **(By Plaintiff Against All Defendants)**

15 112. Plaintiff repeats and realleges each and every allegation contained in
16 the paragraphs above as though fully set forth herein.

17 113. As stated above, Defendants, in the course and conduct of their
18 business and for the purpose of guiding others in their business, failed to supply
19 material information about Illegal Gravity Knives.

20 114. Defendants did not exercise reasonable care or competence in
21 withholding the information.

22 115. Plaintiff and members of the Class relied upon representations that
23 Illegal Gravity Knives were not illegal.

24 116. The reliance by Plaintiff and members of the Class that Illegal Gravity
25 Knives were not illegal was reasonable and justified.

26 117. As a direct and proximate result of Defendants failing to disclose
27 and/or concealing the material fact that Illegal Gravity Knives were, in fact, illegal
28 in numerous jurisdictions, Plaintiff and members of the Class have suffered actual

1 damages in an amount to be determined at trial in that they were induced to
2 purchase products they would not have purchased had they known the true facts
3 about the products, *i.e.*, they spent money on Illegal Gravity Knives that were
4 illegal to possess.

5 **EIGHTH CAUSE OF ACTION**

6 **Unjust Enrichment**

7 **(By Plaintiff Against All Defendants)**

8 118. Plaintiff repeats and realleges each and every allegation contained in
9 the paragraphs above as though fully set forth herein.

10 119. Defendants have uniformly marketed and offered for sale Illegal
11 Gravity Knives despite their illegality and without representing them as such to
12 consumers.

13 120. Plaintiff and members of the Class conferred a benefit on Defendants
14 by purchasing Illegal Gravity Knives.

15 121. Defendants accepted and retained the benefits of sales of Illegal
16 Gravity Knives in the form of profits from such sales.

17 122. Defendants' conduct was unlawful, unfair, misleading, and deceptive.

18 123. Under the circumstances, it would be unfair for Defendants to retain
19 the benefit of their conduct.

20 124. Plaintiff and members of the Class are entitled to restitution of the
21 amounts paid for Illegal Gravity Knives. Specifically, Plaintiff and members of the
22 Class are entitled to a refund of the full amount of the purchase price from all of
23 Defendants' sales of Illegal Gravity Knives.

24 **NINTH CAUSE OF ACTION**

25 **Permanent Injunctive Relief**

26 **(By Plaintiff Against All Defendants)**

27 125. Plaintiff repeats and realleges each and every allegation contained in
28 the paragraphs above as though fully set forth herein.

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1 126. Defendants have committed wrongful acts that have injured Plaintiff
2 and members of the Class, as alleged herein.

3 127. Members of the Class who do not know of the illegality of the knives
4 continue to purchase them as they are still being marketed and sold by defendants.

5 128. There exists an imminent likelihood of continuing irreparable injury to
6 Plaintiff and members of the Class that will be prevented by injunctive relief.

7 129. There is a lack of a fully adequate remedy at law, *i.e.*, an award of
8 monetary damages alone will not fully restore the threatened loss to Plaintiff and
9 members of the Class.

10 130. An injunction will not disserve the public interest.

11 131. The balance of equities favors the entry of an injunction.

12 132. Plaintiff and members of the Class have a likelihood of success on the
13 merits of the claims alleged herein.

14 **VII. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
16 situated, respectfully prays for:

17 1. An order certifying a representative Class and appointing the Plaintiff
18 and his counsel to represent the Class as Class Representatives and Class Counsel;

19 2. An award of actual damages suffered by Plaintiff and the members of
20 the Class as a result of Defendants' conduct including, but not limited to,
21 compensatory damages in an amount to be determined at trial;

22 3. An award of statutory damages, as allowed by law;

23 4. An award of punitive damages in an amount to be determined at trial;

24 5. An award of statutory pre- and post-judgment interest on any amounts
25 awarded;

26 6. An award of reasonable attorney's fees and costs of prosecuting this
27 action;

28 7. On the CLRA cause of action Plaintiff seeks only injunctive relief; and

1 8. Such other and further relief as may be deemed just and proper.

2 DATED: June 21, 2018

Respectfully submitted,

3 **KIESEL LAW LLP**

4
5
6 By: /s/ Jeffrey A. Koncius

7 Paul R. Kiesel
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1 **VIII. DEMAND FOR JURY TRIAL**

2 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by
3 jury of any and all issues in this action so triable of right.

4 DATED: June 21, 2018

Respectfully submitted,

5 **KIESEL LAW LLP**

6
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9 Paul R. Kiesel

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