

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAMES RIGGINS, on behalf of himself	)	
and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 12-cv-5886
	)	
STACK-ON PRODUCTS CO., an	)	
Illinois corporation,	)	
	)	JURY DEMAND REQUESTED
Defendant.	)	

**CLASS ACTION COMPLAINT**

Now comes Plaintiff, JAMES RIGGINS, ("RIGGINS"), on behalf of himself and all others similarly situated, by and through his attorneys, LARRY D. DRURY, LTD., and MARC W. TOBIAS<sup>1</sup>, as his Class Action Complaint against Defendant, STACK-ON PRODUCTS CO., ("STACK-ON"), states as follows:

**INTRODUCTION**

1. Plaintiff files this nationwide class action complaint on behalf of Plaintiff and all others similarly situated who seek compensatory damages, restitution and disgorgement of all profits gained by Defendant arising out of the sale of certain Stack-On Safes that were designed, manufactured, marketed and sold by Defendant, which contained design defects that made them susceptible to opening by use of various commercially available products such as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, rendering the safes ineffective and unfit to perform the safety function for which they were designed. The following

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<sup>1</sup> Marc W. Tobias' Application for Admission Pro Hac Vice to be filed.

STACK-ON safes (hereinafter "SAFES"), manufactured and designed by Defendant manifest design defects and, as a result of the defects, the SAFES must be replaced:

PC-650 Portable Case with Electronic Lock  
PDS-500 Drawer Safe with Electronic Lock  
PS-5-B Drawer Safe with Biometric Lock  
PS-7-B Extra Wide Safe with Biometric Lock  
PS-10-B Personal Safe with Biometric Lock  
QAS-1200-B Quick Access Safe with Biometric Lock  
QAS-710 Drawer Safe with Motorized Electronic Lock  
QAS-1000 Quick Access Drawer Safe with Electronic Lock  
QAS-1200 Quick Access Safe with Electronic Lock

2. Plaintiff also seeks remedies for Defendant's failure to adequately notify customers of the defects. Finally, Plaintiff seeks to enjoin Defendant from continuing to engage in the marketing and sale of the defective SAFES.

3. Plaintiff, on behalf of himself and all others similarly situated, brings this action pursuant to the Illinois Consumer Fraud Act, 815 ILCS §505/1, *et. seq.*, and all 49 other state consumer statutes, common law fraud, breach of contract, breach of implied contract, injunction, negligence, strict products liability, failure to warn, breach of warranty, negligent misrepresentation, violation of Magnuson-Moss Warranty Act, and unjust enrichment.

### **PARTIES**

4. Plaintiff, JAMES RIGGINS, is a citizen of the State of Washington, County of Clark.

5. Defendant, STACK-ON is an Illinois corporation, organized under the laws of the State of Illinois, with its principal place of business located at 1360 North Old Rand Road, Wauconda, IL 60084.

6. STACK-ON safes are electro-mechanical security safes, ranging from those for use in the private home and other residences, to those intended to service small business and

some government sector applications.

7. STACK-ON's traditional sales channels for safes include locksmiths, hardware stores, security shops and retail and sporting stores where they are located in the same department as gun and weapon sales.

8. STACK-ON is a leading gun safe manufacturer in the United States, manufacturing, designing and selling electro-mechanical security safes. Electro-mechanical safes offer keyless entry, with easy and convenient changing of credentials.

9. STACK-ON was and is aware that in North America, the industry is strongly influenced by the potential for legal action on the grounds of liability and safe equipment is vitally important for home and building owners, et al. Further, STACK-ON is, and was aware that required standards for safes and security products have gradually been raised and the spending per capita on safe and security products in these markets is one of the highest in the world.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), because at least one class member is of diverse citizenship from the Defendant, there are more than 100 class members nationwide, and the aggregate amount in controversy exceeds \$5,000,000 and minimal diversity exists.

11. Venue is proper in this District of 28 U.S.C. §1391(a) because Defendant is incorporated and maintains its headquarters in the State of Illinois.

#### **STATEMENT OF FACTS**

12. Plaintiff purchased the STACK-ON QAS-1000 Quick Access Drawer Safe from Wholesale Sports in Vancouver, Washington in 2011, within the relevant time frame under

applicable statute of limitations, for approximately \$120.00 and placed the safe in the bedroom of his home.

13. All STACK-ON SAFES listed above have the same or like defects and have similar mechanical ways to by-pass their locking mechanisms and each of them jeopardize the sanctity, safety and security of the property and person of the Plaintiff and the Class.

14. Defendant is involved in the business of designing, manufacturing, marketing and selling electro-mechanical safes. The safes are placed and/or installed in homes and buildings and require the user to input the appropriate combination in order to open the safe.

15. At all times relevant herein, STACK-ON markets its line of safes as security devices. Further, virtually all advertisement photographs of STACK-ON SAFES show guns placed therein, thereby expressing the safety and security of the SAFES.

16. According to representations made by STACK-ON, STACK-ON “offers the broadest range of firearm security products in the world, from security cabinets to upscale safes with UL RSC listings. There is a safe or cabinet to match any price point or need with a wide range of features:

- A. UL RSC Security or California Department of Justice approved safes;
  - B. ETL tested and verified fire resistant safes;
  - C. Electronic, combination, key and NEW biometric locks;
  - D. Wet paint-high gloss mirror finishes, powder paint gloss finishes and matte paint finishes are available;
  - E. New interior storage is now available;
  - F. New larger 1.5” locking bolts are included on all full-sized fire safes.”
17. Defendant represents that the QAS-1000 Quick Access Drawer Safe with

Electronic Lock is:

- “A. Tested and listed as a California DOJ Firearm Safety Device;
- B. Electronic lock allows for a 3 to 8 digit combination to be programmed into the safe. Includes a back up trouble key.
- C. Drawer pops out when locking mechanism is released. Ball bearing drawer slide allows the drawer to slide in and out without binding. Holds standard sized pistol and valuables. Foam padded bottom protects contents from scratching.
- D. Body is designed for safe to be secured with steel cable (1500 lb. test) or can be mounted to a shelf or floor. Cable is secured when drawer is in place. Cable is included.”

18. Defendant’s representation that their SAFES are “Tested and listed as a California DOJ Firearm Safety Device” is misleading in that the Department of Justice standards do not address the methods used to open safes, i.e., the Department of Justice standards to open safes are not enumerated as tested protocols for opening safes.

19. Defendant further represents that their “Personal Safes and Quick Access Safes” are:

- “A. Easy and Affordable Way to Secure Valuables and Pistols in the Home or On the Go;
- B. California DOJ Tested and Approved Against Attack;
- C. Selected Units have Adjustable Shelving for Greater Flexibility;
- D. Electronic or Biometric Locks with Key Backup includes a 3 Year Warranty for Workmanship.”

20. As a result of multiple design flaws in the SAFES, they can be opened easily by

using such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration to the outside of the SAFES which manipulates internal mechanisms without inputting the necessary credentials.

### **CLASS ALLEGATIONS**

21. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action against Defendant on behalf of himself and a nationwide consumer class. The Class is defined as follows:

All persons and entities that purchased any of the following STACK-ON safes with electro-mechanical locking systems from 2002 to the date of judgment herein:

PC-650 Portable Case with Electronic Lock  
PDS-500 Drawer Safe with Electronic Lock  
PS-5-B Drawer Safe with Biometric Lock  
PS-7-B Extra Wide Safe with Biometric Lock  
PS-10-B Personal Safe with Biometric Lock  
QAS-1200-B Quick Access Safe with Biometric Lock  
QAS-710 Drawer Safe with Motorized Electronic Lock  
QAS-1000 Quick Access Drawer Safe with Electronic Lock  
QAS-1200 Quick Access Safe with Electronic Lock

22. Excluded from the Class is the Defendant, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; persons and entities who have sustained personal injuries or bodily harm as a result of the defects in the SAFES; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

23. Defendant's alleged actions, inactions, etc. are continuing and ongoing and therefore this Court should certify a class that includes purchasers up to and including the date of judgment herein.

24. This action has been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

25. Numerosity: Plaintiff does not know the exact size of the Class, but it is established that it is comprised of thousands of persons and entities. The persons and entities in the Class are so numerous that the joinder of all such claimants is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts pursuant to Rule 23(a)(1).

26. Common Questions Predominate: Pursuant to Rule 23(a)(2) and (b)(3), this action involves common questions of law and fact as to all of the devices in this litigation relating to defectiveness, labeling, warning, failure to recall, knowledge and duty, and these predominate over individual issues. The common questions of law and fact predominate over individual questions, as proof of a common or single set of facts will establish the right of each member of the Class to recover. Among the questions of law and fact common to the Class are:

- A. Whether or not the SAFES were defectively designed;
- B. Whether or not the SAFES are fit for their intended use;
- C. Whether the Defendant failed to warn of the ability for the safety mechanism of the SAFES to be bypassed;
- D. Whether the Defendant concealed information and the nature of the defects from the Class Members;
- E. Whether Defendant engaged in the alleged conduct knowingly, recklessly, or negligently;
- F. the amount of revenues and profits Defendant received and/or the amount of

monies or other obligations lost by Class members as a result of such wrongdoing;

- G. Whether Class Members are entitled to declaratory, injunctive and other legal and equitable relief and, if so, what is the nature of such relief;
- H. Whether Class Members are entitled to payment of actual, incidental, consequential, exemplary and/or statutory damages, plus interest thereon, and if so, what is the nature of such relief;
- I. Whether Class Members are entitled to disgorgement;

27. **Typicality:** Pursuant to Rule 23(a)(3), Plaintiff's claims are typical of the Class because Plaintiff purchased a defective safe which is identical or nearly identical to the SAFES purchased by other potential plaintiffs in that all SAFES have similar design defects that allow them to be bypassed by manipulation of the internal mechanisms. Thus, Plaintiff and Class Members sustained the same injuries and damages arising out of the defective design of the SAFES. The damages of each Class Member were caused directly by Defendant's wrongful conduct and the design of the SAFES.

28. **Adequacy:** Pursuant to Rule 23(a)(4) and (g)(1), Plaintiff will fairly and adequately protect the interests of the Class because it is in his best interests to prosecute the claims alleged herein to obtain full compensation due to them for the defective conditions of which he complains. Plaintiff also has no interests that are in conflict or antagonistic to the interests of Class Members. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and that of the Class. No conflict of interest exists between Plaintiff and the Class hereby, because all questions of law and fact regarding liability of Defendant are common to the Class Members and predominate over any individual issues that



may exist, such that by prevailing on their own claims. Plaintiff necessarily will establish Defendant's liability to all Class Members. Plaintiff and their counsel are prepared to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class Members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for Class Members.

29. Superiority: Pursuant to Rules 23(b)(3), a class action is superior to other available methods for the fair and efficient adjudication for this controversy because joinder of all Class Members is impracticable. There is no plain, speedy or adequate remedy other than by maintenance of the Class Action. The prosecution of individual remedies by Class Members will tend to establish inconsistent standards of conduct for the Defendant and result in the impairment of Class Members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual Class Member may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual Class Members to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

### **COUNT I**

#### **NEGLIGENCE**

1-29. Plaintiff realleges and incorporates paragraphs 1-29 as and for paragraphs 1-29 of this Count I.

30. Defendant was careless in designing, testing, manufacturing, marketing,

distributing and selling the SAFES with defects and which can be opened with such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration.

31. Defendant had knowledge the SAFES had defects yet, up until the time of this pleading, Defendant has failed in its duty to recall these devices or to alert the public and users of the SAFES of the defects and the need to replace them and offer to pay for replacement.

32. At the time Defendant manufactured, distributed and/or sold the Safes, it owed a non-delegable duty to persons like the named Plaintiff and the Class to exercise ordinary and reasonable care to properly design the SAFES and it owe a continuing duty to warn about the defects and to repair and/or recall its defective SAFES.

33. As a proximate result of the aforementioned negligence of Defendant, Plaintiff and the Class suffered and continue to suffer immediate damages and loss in the form of a security breach, loss of sanctity, safety, comfort and security in the knowledge that the integrity of Plaintiff's and the Class' property could be compromised or breached and valuables lost, and will be required to pay for additional necessary actions to repair or replace the defective SAFES along with additional incidental and related expenses thereto.

34. The conduct of Defendant aforesaid exhibits such disregard for the consequences as to reveal a conscious indifference to the clear risk of property and personal damage, and merits the imposition of punitive damages.

## **COUNT II**

### **STRICT PRODUCT LIABILITY**

1-34. Plaintiff realleges and incorporates paragraphs 1-34 as and for paragraphs 1-34 of this Count II.

35. Defendant designed, manufactured, marketed, distributed and sold the subject

SAFES in a condition which rendered them not fit for their intended use due to their ability to be easily opened.

36. Specifically, there are design defects in the SAFES manufactured, distributed, and/or sold by Defendant to Plaintiff and the Class Members; the defects existed at the time the SAFES were sold to the named Plaintiff and the Class; each of the SAFES manifests the defects at the present time; and the defects were the direct and proximate cause of the damages to the named Plaintiff and the Class.

37. The design defects – which create an unreasonable risk to Plaintiff and Plaintiff's property and person – renders Defendant's SAFES unfit for its intended purpose, i.e., that of providing safety and security for Plaintiff's and the Class' person and property.

38. Any utility that the design of the SAFES may have is outweighed by the risk associated with the design.

39. The aforementioned defects existed when Defendant placed the subject SAFES into the stream of commerce and continue to manifest themselves at the present time in each of the SAFES.

40. The property and personal loss to the Plaintiff and the Class is the proximate result of one or more of the defects.

41. By engaging in the aforesaid conduct, Defendant is strictly liable to Plaintiff and the Class.

42. As a proximate result of the aforementioned strict product liability of Defendant, Plaintiff and the Class suffered and continue to suffer immediate damages and loss in the form of a security breach, loss of sanctity, safety, comfort and security in the knowledge that the integrity of Plaintiff's and the Class' property could be compromised or breached and valuables lost, and

will be required to pay for additional necessary actions to repair or replace the defective SAFES along with additional incidental and related expenses thereto.

**COUNT III**

**FAILURE TO WARN**

1-42. Plaintiff realleges and incorporates paragraphs 1-42 as and for paragraphs 1-42 of this Count III.

43. Defendant knew or should have known that the SAFES contained a non-obvious danger in their ability to be compromised as set forth above. However, Defendant failed to inform Plaintiff and the Class as to the possibility that the SAFES could be easily opened by use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration.

44. Had Plaintiff and the Class been warned about the possibility that the SAFES could be easily opened by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, they would not have purchased the SAFES.

45. As a direct and proximate result of the Defendant's failure to warn Plaintiff and the Class that the SAFES could be easily opened by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, Plaintiff and the Class have suffered immediate damages and loss in the form of a security breach, loss of sanctity, safety, loss of property and the comfort and security in the knowledge that the integrity of Plaintiff's property and person could be compromised or breached, and will be required to pay for additional necessary actions to repair or replace the defective SAFES along with additional incidental expenses.

**COUNT IV**

**BREACH OF WARRANTY**

1-45. Plaintiff realleges and incorporates paragraphs 1-45 as and for paragraphs 1-45 of this Count IV.

46. Each of STACK-ON's SAFES which are the subject matter of this lawsuit, manifest the defect which renders the SAFES not of merchantable quality.

47. Defendant has breached the applicable warranties, express and implied, and is therefore liable to Plaintiff and the Class.

48. As a direct and proximate result of the Defendant's breach of warranty, Plaintiff and the Class that the SAFES could be easily opened by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, Plaintiff and the Class have suffered immediate damages and loss in the form of a security breach, loss of sanctity, safety, loss of property and the comfort and security in the knowledge that the integrity of Plaintiff's property and person could be compromised or breached, and will be required to pay for additional necessary actions to repair or replace the defective SAFES along with additional incidental expenses.

**COUNT V**

**VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT**

1-48. Plaintiff realleges and incorporates paragraphs 1-48 as and for paragraphs 1-48 of this Count V.

49. The Illinois Consumer Fraud Act, 815 ILCS §505/1 *et. seq.*, was enacted to prohibit, and protect persons from deceptive, fraudulent and unfair practices.

50. 815 ILCS §505/2 prohibits unfair methods of competition and unfair or deceptive

acts or practices, including but not limited to, the use of employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...whether any person has in fact been misled, deceived or damaged thereby.

51. Plaintiff and the Class are “consumers” as defined in 815 ILCS §505/1(e), and the Defendant is a “person” who engaged in the aforesaid conduct within the course of trade and commerce as defined in 815 ILCS §505/1(b), as Plaintiff and the Class were consumers of the Defendant’s product.

52. Defendant knew or should have known that the SAFES were defective and easily opened and failed to disclose that information to the general public while continuing to sell the SAFES and continuing to represent that the SAFES were merchantable for their intended use.

53. Plaintiff and the Class relied upon the representations and omissions of the Defendant in purchasing the SAFES and continued to rely upon the representations and omissions of the Defendant subsequent to their purchase of the SAFES.

54. By concealing this crucial information and subjecting all purchasers of the SAFES to security breaches, and by continuing to represent that the SAFES were fit for their intended use, Defendant engaged in material, deceptive, consumer-oriented acts, in the conduct of their business that damaged Plaintiff and the Class.

55. Plaintiff and the Class were injured by Defendant’s deceptive acts in purchasing the SAFES that were not fit for their intended purpose, and Plaintiff incurred expenses that would otherwise not have been incurred.

56. Subsequent to their purchase of the SAFES, Defendant continued with their representations and omissions to the Plaintiff and the Class that the SAFES were fit for their

intended purpose.

57. As a direct and proximate result of Defendant's violation of the Illinois Consumer Fraud Act, the named Plaintiff and the Class were caused to suffer and continue to suffer immediate damages and loss in the form of a security breach, loss of sanctity, safety, loss of property and the comfort and security in the knowledge that the integrity of Plaintiff's property and person could be compromised or breached, loss of the decreased value of the product itself, consequential damages in the form of losses sustained by the purchase of the defective product and have been damaged in an amount that will be proven at trial.

### **COUNT VI**

#### **COMMON LAW FRAUD**

1-57. Plaintiff realleges and incorporates paragraphs 1-57 as and for paragraphs 1-57 of this Count VI.

58. Defendant has made misrepresentations and omissions of facts material to Plaintiff's and the Class' decisions to purchase the SAFES as set forth in detail above by actively concealing and causing others to conceal, true information about the nature and implications of the design of the SAFES and the fact that their safety features could easily be bypassed by use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration.

59. Defendant knew at the time that it made these misrepresentations and omissions that they were false or that Defendant had failed to disclose facts it was obligated to disclose in order to make its other representations not misleading. Defendant was aware that Plaintiff and the Class would rely on these misrepresentations and omissions, and that such representations were material in the Plaintiff's and the Class' decisions to purchase the SAFES.

60. Plaintiff and the Class reasonably relied upon Defendant's misrepresentations and omissions of material fact as promoted through their marketing and sales strategies.

61. Defendant's misrepresentations and omissions of material fact directly and proximately caused Plaintiff's and the Class' damages.

62. As a direct and proximate result of Defendant's fraud, the named Plaintiff and the Class were caused to suffer and continue to suffer immediate damages and loss in the form of a security breach, loss of sanctity, safety, loss of property and the comfort and security in the knowledge that the integrity of Plaintiff's property and person could be compromised or breached, loss of the decreased value of the product itself, consequential damages in the form of losses sustained by the purchase of the defective product and have been damaged in an amount that will be proven at trial.

## **COUNT VII**

### **UNJUST ENRICHMENT**

1-62. Plaintiff realleges and incorporates paragraphs 1-62 as and for paragraphs 1-62 of this Count VII.

63. At all times relevant hereto, Defendant designed, manufactured, produced, marketed and/or sold the SAFES.

64. Plaintiff and the Class conferred upon Defendant, without knowledge that the SAFES could be easily bypassed by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, payment for such SAFES, benefits that were non-gratuitous.

65. Defendant appreciated or had knowledge of the non-gratuitous benefits conferred



upon them by Plaintiff and the Class.

66. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Class, with full knowledge and awareness that, as a result of Defendant's unconscionable wrongdoing, Plaintiff and the Class were not receiving products of high quality, fitness or value that had been represented by Defendant and reasonable consumers would have expected.

67. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiff and the Class under these circumstances made Defendant's retention of the benefits unjust and inequitable.

68. Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiff and the Class is unjust and inequitable, Plaintiff and the Class are entitled to, and hereby seek disgorgement and restitution of Defendant's wrongful profits, revenue and benefits in a manner established by the Court.

### **COUNT VIII**

#### **DECEIT, FRAUD AND/OR MISREPRESENTATION**

1-68. Plaintiff realleges and incorporates paragraphs 1-68 as and for paragraphs 1-68 of this Count VIII.

69. The misrepresentations, nondisclosure and/or concealment of material facts made by Defendant to Plaintiff and the Class, as set forth above, were known by Defendant to be false and material and were intended by the Defendant to mislead Plaintiff and the Class.

70. Plaintiff and the Class were misled and deceived and were induced by Defendant to incur expenses they otherwise would not have incurred.

71. As a result of the conduct of Defendant, Plaintiff and the Class have been damaged and continue to suffer immediate damages and loss in the form of a security breach,

loss of sanctity, safety, comfort and security in the knowledge that the integrity of Plaintiff's and the Class' property and person could be compromised, and by having incurred unwarranted expenses.

**COUNT IX**

**NEGLIGENT MISREPRESENTATION**

1-71. Plaintiff realleges and incorporates paragraphs 1-71 as and for paragraphs 1-71 of this Count IX.

72. Defendant had a duty to provide honest and accurate information to Plaintiff and the Class to prevent them from unknowingly purchasing defective SAFES.

73. Defendant concealed all information relating to the defective nature of the SAFES and continued to represent that the SAFES were fit for their intended use.

74. Such misrepresentations were and are made by Defendant through the use of terms like "Tested and listed as a California DOJ Firearm Safety Device", safety, security and convenience" in describing their products and showing photographs of guns being stored in the SAFES when, in fact, such representations were false as the SAFES could be easily bypassed and the various marketing materials made available to the Plaintiff and the Class by Defendant were also misleading and false.

75. Defendant knew or in the exercise of reasonable diligence should have known that they did not provide honest and accurate information to the Plaintiff and the Class as to the SAFES' safety or security, as the SAFES can be easily bypassed and thus are not what the Defendant represented and purported them to be.

76. Plaintiff and the Class justifiably relied on Defendant's misrepresentations and made purchase and safety decisions based on those representations.

77. As a result of the conduct of Defendant, Plaintiff and the Class have been damaged and continue to suffer immediate damages and loss in the form of a security breach, loss of sanctity, safety, comfort and security in the knowledge that the integrity of Plaintiff's and the Class' property and person could be compromised, and by having relied on Defendant's misrepresentations with regard to the SAFES.

**COUNT X**

**VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

1-77. Plaintiff realleges and incorporates paragraphs 1-77 as and for paragraphs 1-77 of this Count X.

78. Plaintiff and the Class are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(3).

79. Defendant is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(4)-(5).

80. The SAFES are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(1).

81. 15 U.S.C. §2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

82. Defendant's express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(6).

83. The SAFES' implied warranties are covered under 15 U.S.C. §2301(7).

84. Defendant breached these warranties as described in more detail above, but generally by not repairing or adjusting the SAFES' materials and workmanship defects; providing SAFES not in merchantable condition and which present an unreasonable risk of

bypass and not fit for the ordinary purpose for which SAFES are used, providing SAFES that were not fully secure or reliable; and not curing defects and nonconformities once they were identified.

85. Plaintiff and the Class have had sufficient direct dealings with either the Defendant or their agents, including, but not limited to Defendant's retail distribution to establish privity of contract between Plaintiff and the Class. Notwithstanding this, privity is not required in this case because Plaintiff and the Class members are intended third-party beneficiaries of contracts between the Defendant and its agents; specifically, they are the intended beneficiaries of Defendant's implied warranties. The agents were not intended to be the ultimate consumers of the SAFES and have no rights under the warranty agreements provided with the SAFES; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because the SAFES are dangerous instrumentalities due to the aforementioned defects and nonconformities.

86. Requiring an informal dispute settlement procedure, or affording Defendant a reasonable opportunity to cure its breach of written warranties, would be unnecessary and futile. At the time of sale or lease of each SAFE, Defendant knew, should have known, or were reckless in not knowing of its misrepresentations concerning the SAFES' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective designs. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement – whether under the Magnuson-Moss Warranty Act or otherwise – that Plaintiff and the Class resort to an informal dispute resolution procedure and/or afford Defendant a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

87. The amount in controversy of Plaintiff's individual claim meets or exceeds the sum of \$25.00. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

88. Plaintiff and the Class seek to revoke their acceptance of the SAFES or, in the alternative, seek all damages, including diminution in value of their SAFES, in an amount to be proven at trial.

### **COUNT XI**

#### **BREACH OF CONTRACT**

1-88. Plaintiff realleges and incorporates paragraphs 1-88 as and for paragraphs 1-90 of this Count XI.

89. Beginning on at least January, 2002, and continuing, STACK-ON entered into thousands of transactions in which STACK-ON agreed to sell the SAFES, purchased by Plaintiff and the Class, at stated prices.

90. STACK-ON has acted in bad faith and breached its contract(s) with Plaintiff and the Class by selling defective SAFES that could be easily bypassed by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, and do not protect the property and person of the Plaintiff and the Class.

91. STACK-ON's conduct as alleged above, constitutes a breach of the covenant of good faith and fair dealing to the Plaintiff and the Class, which is imputed into every contract in Illinois under the common law of Illinois and the Restatement (Second) of Contract, §205.

92. Plaintiff and the Class complied with all obligations, conditions and duties under the contract by paying all charges billed by STACK-ON for the SAFES.

93. As a direct and proximate result of STACK-ON's breach, Plaintiff and the Class

have suffered damages including, but not limited to, monies paid to STACK-ON for defective SAFES, plus interest, attorneys' fees and costs.

94. Plaintiff and the Class did not knowingly or voluntarily pay for defective SAFES. STACK-ON misrepresented, concealed and failed to disclose the true nature, quality and purpose of its SAFES.

## **COUNT XII**

### **BREACH OF IMPLIED CONTRACT IN FACT AND/OR IN LAW**

1-94. Plaintiff realleges and incorporates paragraphs 1-94 as and for paragraphs 1-94 of this Count XII.

95. Plaintiff and the Class contracted with STACK-ON to purchase SAFES that were safe and secure. STACK-ON agreed to sell SAFES, purchased by the Plaintiff and the Class at the stated prices.

96. Terms implicit in the Plaintiff's and the Class' aforesaid implied contract was that the SAFES were safe and secure, were not defective, and could not be easily opened, i.e., with a shock, vibration, or the use of a drinking straw, paper clips or wire, and would protect the personal property or person of the Plaintiff and the Class.

97. Defendant breached the aforesaid implied contracts and covenant of good faith and fair dealing with the Plaintiff and the Class by selling defective SAFES that could be easily bypassed by the use of readily available wire, drinking straws or paper clips, shock or vibration, and do not protect the property and/or person of the Plaintiff and the Class.

98. Plaintiff and the Class were damaged as a proximate result of Defendant's aforesaid breaches on their contracts implied in fact and/or in law.

99. As a result of Defendant's breach of their implied contract(s), Plaintiff and the

Class suffered damages including, but not limited to, monies paid to STACK-ON for defective SAFES, plus interest, attorneys' fees and costs.

**COUNT XIII**

**INJUNCTION**

1-99. Plaintiff realleges and incorporates paragraphs 1-99 as and for paragraphs 1-99 of this Count XIII.

100. Plaintiff and the Class have no adequate remedy at law to restrain Defendant's conduct as alleged herein as to the design, manufacturing, marketing, sale or distribution of defective SAFES that could be easily bypassed by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, and do not protect the property and/or person of the Plaintiff and the Class.

101. Plaintiff and the Class will suffer irreparable harm and injury from Defendant's conduct if Defendant is not so restrained, requiring the entry of a temporary restraining order, a preliminary/permanent injunction and/or mandatory injunction.

102. Pursuant to Federal Rules of Civil Procedure 65, and based upon the facts and circumstances alleged herein, Defendant should be restrained by a temporary restraining order, preliminary and/or permanent injunction from continuing to design, manufacture, market, sell or distribute defective SAFES that could be easily bypassed by the use of such implements as a drinking straw, paper clip, wires, flat pieces of metal strips, shock or vibration, and do not protect the property or person of the Plaintiff and the Class.

103. Pursuant to Federal Rules of Civil Procedure 65, and based upon the facts and circumstances alleged herein, Defendant should be directed by a mandatory preliminary and permanent injunction to repair, replace or reimburse the Plaintiff and the Class the purchase price

of all defective SAFES, plus interest.

104. Plaintiff and the Class are likely to succeed on the merits and the hardships are balanced in their favor.

105. For good cause shown, bond should be waived.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated prays that this Honorable Court grant relief as follows:

- A. An Order certifying the Class and appointing Plaintiff and his counsel to represent the Class;
- B. An Order awarding Plaintiff and the Class compensatory damages, restitution and/or disgorgement and other legal and equitable relief and remedies as the Court deems proper;
- C. An order enjoining Defendant from engaging in the wrongful practices described herein;
- D. Equitable and injunctive relief as alleged herein;
- E. An order awarding Plaintiff and the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' and expert witness fees and other costs as may be deemed applicable;
- F. An order awarding such other and further relief as this Court may deem just and proper; and



G. Plaintiff and all others similarly situated demand a trial by jury.

JAMES RIGGINS, on behalf of himself and all  
others similarly situated,

By: /s/ Larry D. Drury

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