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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14  
15 MARIO DELAMORA, Individually and On  
16 Behalf of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 TUMBLEWEED F/K/A ROCKTAPE, INC. and  
20 IMPLUS FOOTCARE LLC,

21 Defendants.

C.A. No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

22 **INTRODUCTION**

23 Plaintiff, Mario DeLaMora (“Plaintiff”), by and through his undersigned counsel of  
24 record, on behalf of himself and all others similarly situated, submits this class action complaint  
25 (“Complaint”) against Defendants Tumbleweed f/k/a RockTape, Inc. (hereinafter “Tumbleweed”)  
26 and Implus Footcare LLC (sometimes also referred to as Implus LLC) (collectively hereinafter  
27 “Implus”) (Tumbleweed and Implus are collectively hereinafter referred to as “Defendants”), and  
28

1 based upon personal knowledge as to his own acts and circumstances and based upon information  
2 and belief as to all other matters, alleges as follows.

3 1. This case pertains to false and misleading representations by Defendants  
4 concerning products sold by them under the brand name Rocktape,<sup>1</sup> referred to collectively herein  
5 as “RockTape” or the “Products.” These false representations have been made in a concerted and  
6 orchestrated effort to prey on consumers’ eternal hope that products exist that can quickly and  
7 effortlessly alleviate their pain, treat their injuries, and enhance their athletic performance.  
8

9 2. Defendants have deceptively represented that by simply applying strips of stretchy  
10 tape onto the skin above an injured area, consumers (ranging from serious athletes to those with  
11 less active lifestyles) can treat numerous common injuries, improve and enhance athletic  
12 performance, reduce or delay fatigue, and obtain relief from pain.  
13

14 3. RockTape belongs to a group of products known as “kinesiology tape” or “kinesio  
15 tape.”

16 4. Unlike standard or traditional athletic tape, kinesio tape is not wound around  
17 portions of the body, but instead is pre-stretched and then stuck onto the skin above the affected  
18 area(s) of the body.

19 5. The concept for kinesio tape originated with a Japanese chiropractor named Kenzo  
20 Kase, who came up with the idea in the 1970s. The idea was as lacking in substance or merit then  
21 as it is now. Defendants’ creative and aggressive marketing efforts (replete with false and  
22 misleading claims and misrepresentations) are the only reason that Defendants have been able to  
23 sell significant amounts of the Products at premium prices.  
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27 <sup>1</sup> This term is intended to include, without limitation, Standard RockTape, Digit Tape, RockTape  
28 Pre-Cut, Bulk RockTape, RockTape H2O, RockTape Extra Sticky, RockTape AR, RockTape  
Hemp, and RockTape Precut Edema Strips.

1 6. RockTape sells at a substantial premium over the price of standard athletic tape, a  
2 premium which exists (and which consumers are willing to pay) only because of Defendants'  
3 false and misleading claims made in connection with the sale of RockTape.

4 7. Despite this substantial price premium, RockTape is no more effective in treating  
5 sports and non-sports injuries than the significantly less expensive standard athletic tape (and it  
6 may in fact, be less effective). Despite RockTape's logo and tagline, "Go stronger, longer,"  
7 which appears on every package and on the websites that sell the Products, the scientific  
8 community that has studied kinesio tape has come to the conclusion that it does not treat injuries,  
9 improve or enhance athletic performance, reduce or delay fatigue, or provide relief from pain, nor  
10 does it do so any better than conventional sports tape.

11 8. Defendants make their false and misleading representations on the package of the  
12 Products, on their own website, and through third-party online retailers. The third-party online  
13 retailers who sell the Products typically post a picture of the box containing many of the false and  
14 misleading representations in addition to posting text that contains statements similar to those  
15 made by Defendants. In order to be a reseller of RockTape Products, the prospective reseller  
16 must fill out an application and set up an account. Many of the third-party online retailers claim  
17 to be authorized sellers of RockTape. As such, it is Defendants who have orchestrated and  
18 implemented a scheme of deception to the public regarding RockTape, including Plaintiff and the  
19 Class, both through their own sales to the public (including in retail stores) and through third-  
20 party online retailers, as described more fully below.

### 21 PARTIES

22 9. Plaintiff is an individual residing in Alta Loma, California, who is a citizen of  
23 California. Plaintiff purchased the Product while a resident and citizen of California.

1           10. Defendant Tumbleweed is a New Jersey foreign profit corporation with a filing  
2 date of January 11, 2019 and the company's mailing address is 1610 Dell Avenue, Campbell,  
3 California 95008, in Santa Clara County.<sup>2</sup> Tumbleweed is currently owned by Implus;  
4 RockTape, Inc. was acquired by Implus in or around October 2018. Implus, through  
5 Tumbleweed and formerly through RockTape, Inc., sells a variety of fitness and athletic support  
6 products, including (in addition to RockTape), pain relief creams, mobility tools, resistance  
7 bands, and protective gear for weightlifting and other fitness and athletic activities. Under "Our  
8 Mission" on the [www.rocktape.com](http://www.rocktape.com) website, it states, "We're more than just a tape company.  
9 We are a movement company" that "help[s] athletes of every level go stronger, longer with the  
10 best kinesiology tape, cutting-edge education and fitness support products."<sup>3</sup> On that website, it  
11 states at the bottom, "Copyright © 2019 Implus LLC" and "Designed in California."<sup>4</sup> The  
12 customer service number on the website is 408-912-ROCK (7625), a northern California area  
13 code. Additionally, Tumbleweed, in its Instagram post, lists its Campbell, California address and  
14 clicking on the "call" link leads to a California number, 408-912-7645, as indicated by the  
15 screenshots below:  
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26 <sup>2</sup> <https://www.njportal.com/DOR/BusinessNameSearch/Search/BusinessName> (last visited July 3,  
27 2019).

28 <sup>3</sup> [www.rocktape.com/consumer](http://www.rocktape.com/consumer) ("Our Mission") (last visited July 3, 2019).

<sup>4</sup> *Id.*



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rocktape



1,650  
Posts

76.4K  
Followers

2,451  
Following

### RockTape 🔥 Go Stronger, Longer

Product/Service

Pain stops with RockTape. The best kinesiology tape, topical pain relief, fitness 🏋️ accessories, and more. Born in the 🇺🇸

#TeamRockTape

[linktr.ee/rocktape](http://linktr.ee/rocktape)

1610 Dell Ave, Campbell, California

Follow

Message

Call

Email



IGTV



Shop



RockPods



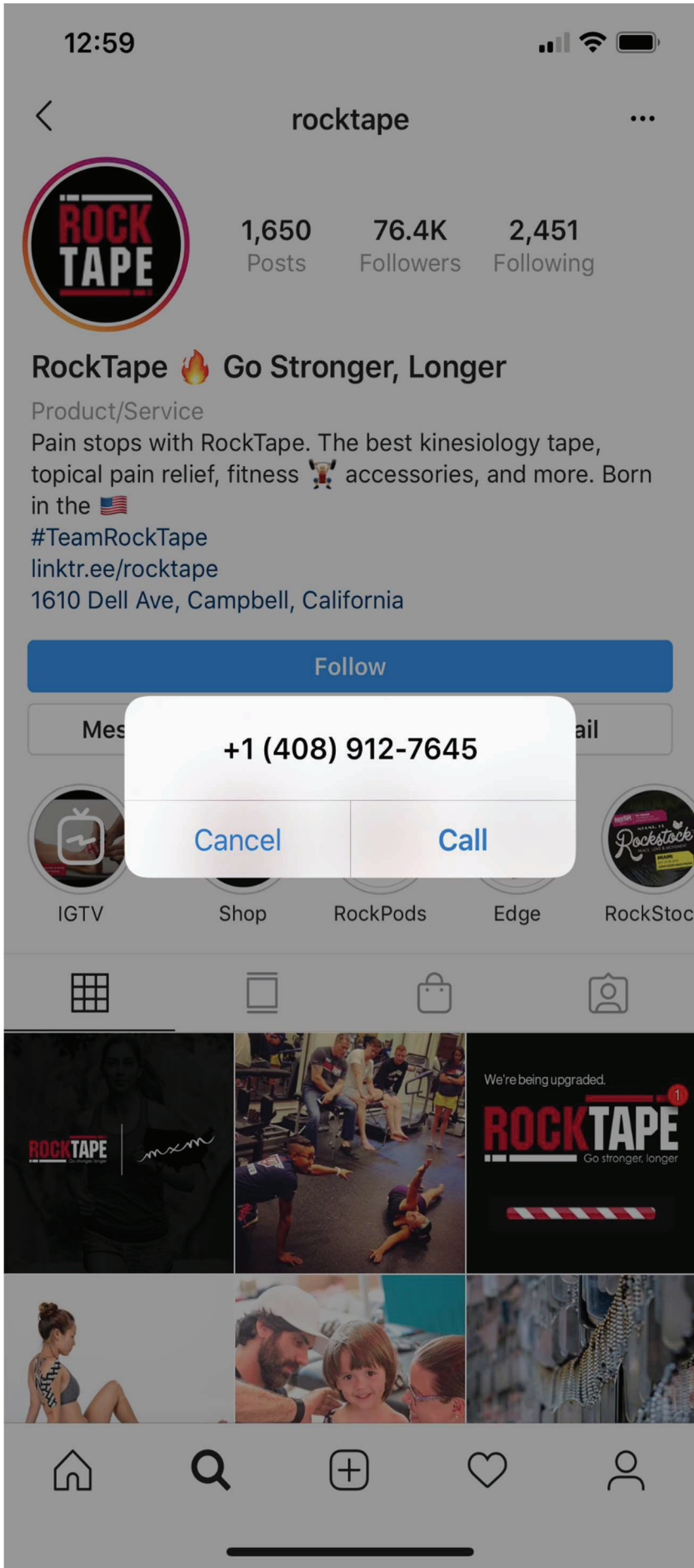
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RockStock



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1 11. Defendant Implus is a limited liability company, organized under the laws of  
2 North Carolina, with a principal place of business at 2001 T.W. Alexander Drive, Box 13925,  
3 Durham, North Carolina 27709. Implus describes itself as “an industry-leading consumer  
4 packaged goods company specializing in fitness, outdoor, sporting goods and footcare products,”  
5 and sells products under more than 20 brand names.<sup>5</sup>  
6

7 **JURISDICTION AND VENUE**

8 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)  
9 because there are more than 100 Class members, the aggregate amount in controversy exceeds  
10 \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of  
11 a state different from that of Defendants.  
12

13 13. This Court has personal jurisdiction over Defendants because: (a) Defendant  
14 Tumbleweed has a place of business in this District and lists its mailing address as 1610 Dell  
15 Avenue, Campbell, California 95008,<sup>6</sup> Santa Clara County, which was the principal place of  
16 business of RockTape, Inc.; and (b) Defendants sell products and transact business within this  
17 District.  
18

19 14. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court because: (a) a  
20 substantial part of the events, omissions and acts giving rise to the claims herein occurred in this  
21 District; Defendants distributed, advertised and sold the Products, which are the subject of the  
22 present Complaint, in this District; and (c) Defendant Tumbleweed has a place of business in this  
23 District.  
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27 <sup>5</sup> [www.implus.com/who-is-implus](http://www.implus.com/who-is-implus) (last visited July 3, 2019).

28 <sup>6</sup> <https://www.njportal.com/DOR/BusinessNameSearch/Search/BusinessName> (last visited July 3, 2019).

**FACTUAL ALLEGATIONS**

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2 15. On or about March 1, 2017, Plaintiff purchased RockTape (Black Logo 2”) online  
3 from Rogue Fitness, at [www.roguefitness.com](http://www.roguefitness.com), at a price of \$18.00. It was shipped to his home in  
4 California.

5  
6 16. Plaintiff was experiencing pain in his knees during workouts, and he purchased the  
7 RockTape in order to treat this condition. He also used it on his shoulder.

8 17. In making his purchase of RockTape, Plaintiff reviewed and relied on Defendants’  
9 claims and representations about RockTape, including those claims and representations made on  
10 the RockTape packaging pictured on the Rogue Fitness website and repeated on the Rogue  
11 Fitness website, as described below.

12 18. On information and belief, Rogue Fitness is an authorized seller of RockTape  
13 Products. The RockTape website states at the bottom, “Become a Reseller” and clicking on that  
14 leads to a webpage that says, “Interested in Carrying RockTape Products in Your Store?”<sup>7</sup> A  
15 business interested in selling RockTape submits an application and sets up an account. Many of  
16 the third-party online retailers state that they are authorized dealers or authorized sellers of  
17 RockTape. In addition, many of the RockTape third-party online retailers have links directly to  
18 advertising by Defendants, including [www.roguefitness.com](http://www.roguefitness.com), which posts a YouTube video  
19 provided by RockTape.<sup>8</sup>

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22 19. In selling the Products, Defendants, both directly and through  
23 [www.roguefitness.com](http://www.roguefitness.com) and other third-party online retailers (including [amazon.com](http://amazon.com)),  
24 misrepresented the qualities of the Products to Plaintiff and members of the Class. For example,  
25 the packaging for RockTape, a picture of which is shown on [www.roguefitness.com](http://www.roguefitness.com) (as well as  
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28 <sup>7</sup> <https://www.rocktape.com/about-us/resellers/> (last visited July 3, 2019).

<sup>8</sup> <https://www.roguefitness.com/rocktape-2-black-logo> (last visited July 3, 2019).

1 on the websites of the other third-party online retailers), contains the following visible  
2 representations, among others:

- 3 • “Go stronger, longer”
- 4 • “Treat Sport Injuries”
- 5 • “Delay Fatigue”
- 6 • “Enhance Performance”
- 7 • “Enhance Performance”

8 20. Below are photographs of the box from the RockTape purchased by Plaintiff:  
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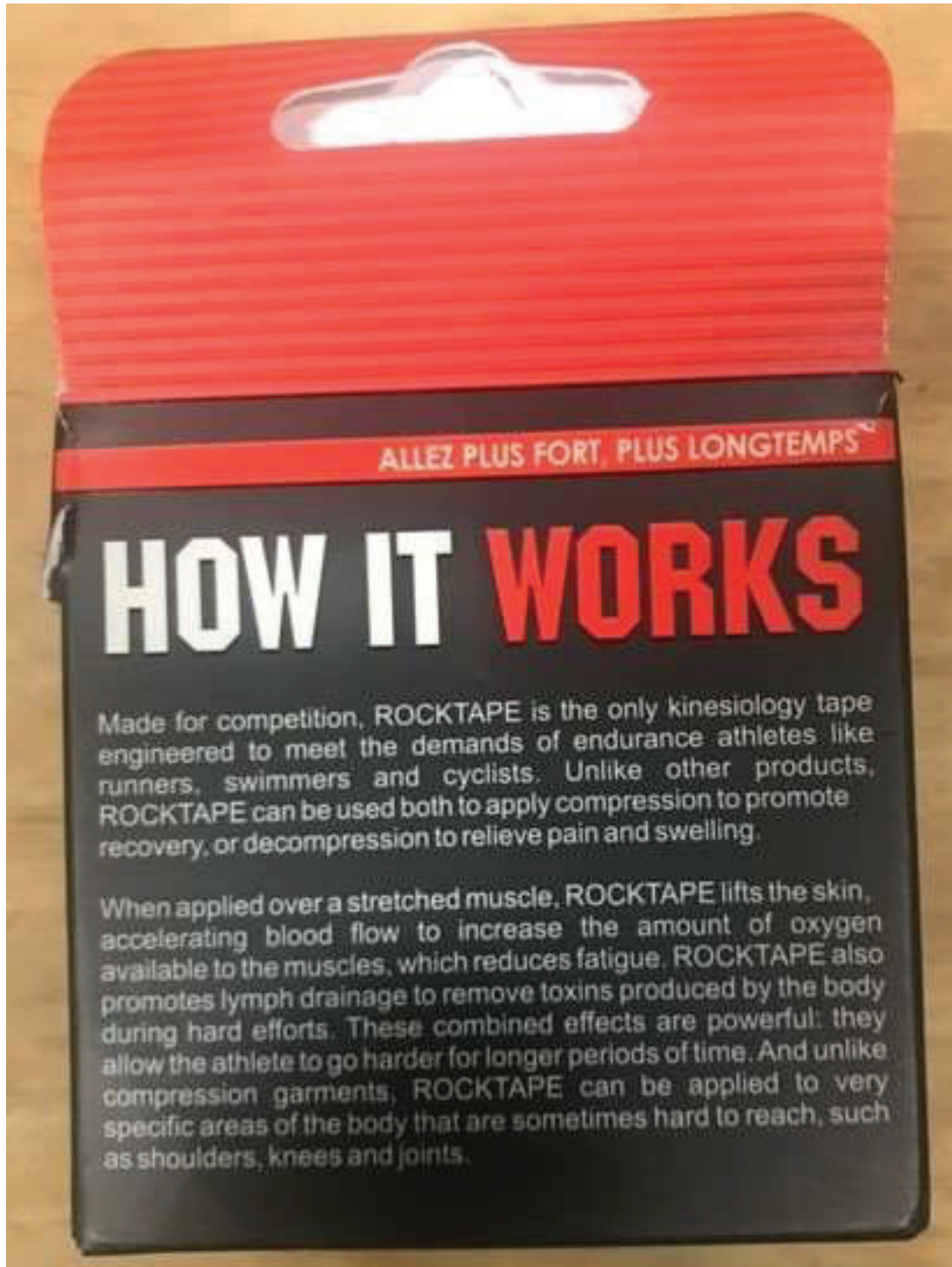


**Photo 1**





Photo 2



25 **Photo 3**

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24 **Photo 4**

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**Photo 5**

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**Photo 6**

21. Below are photographs of the current version of the same RockTape box:

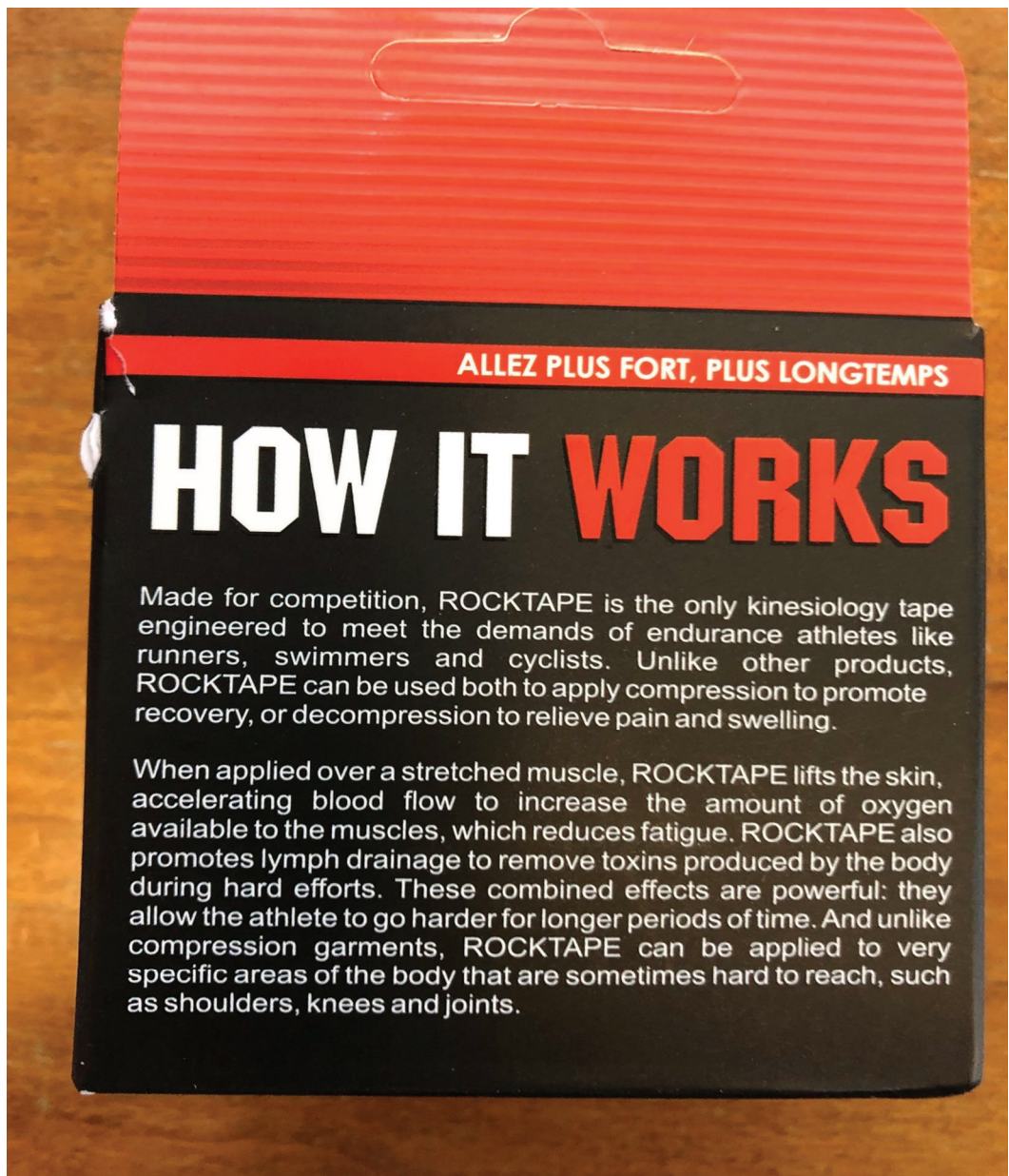
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Photo 1



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**Photo 3**



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**Photo 5**





Photo 6

22. The statements from the RockTape packaging in Paragraph 19 above appear on the box of RockTape purchased by Plaintiff, and they also appear on current RockTape packaging.<sup>9</sup> To the extent that the language on some of the current RockTape packaging varies from the above-quoted language, any such variances are not material, and all or virtually all of the boxes have the same three bullet points prominently displayed on the front panel: “TREAT SPORT[S] INJURIES”; “DELAY FATIGUE”; and “ENHANCE PERFORMANCE.”

<sup>9</sup> See ¶ 20, Photo 1; ¶ 21, Photo 1.

1           23.     Accordingly, every package of RockTape contains the same claims and  
2 representations such that every person who purchases a RockTape Product is exposed to these  
3 claims and representations, including the tagline, “Go stronger, longer,” which appears on every  
4 box and on the websites that sell RockTape Products.

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6           24.     The Rogue Fitness website, [www.roguefitness.com](http://www.roguefitness.com), in addition to having a picture  
7 of the box, adopts and repeats the concepts in the above-quoted statements from the RockTape  
8 packaging. For example, the Rogue Fitness website states that the RockTape Black Logo 2” will  
9 “**ENHANCE PERFORMANCE AND RECOVERY.** Unlike regular compression garments and  
10 tapes, ROCKTAPE’s AR series can be used both to apply compression to promote recovery, or  
11 decompression to relieve pain and swelling. Rocktape is engineered to meet the demands of  
12 endurance athletes like runners, swimmers and cyclists.”<sup>10</sup> Moreover, the Rogue Fitness website  
13 states, *inter alia*, that RockTape has “180% stretch, the same elasticity as skin, to promote full  
14 range of motion,” and “[t]ighter weave, which enables muscle to more easily snap back to  
15 neutral.”<sup>11</sup> The language for these statements was obviously provided by Defendants.

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17           25.     The RockTape website, [www.rocktape.com](http://www.rocktape.com), makes the following representations,  
18 among others, which are consistent with and mirror the representations on the Rogue Fitness  
19 website, [www.roguefitness.com](http://www.roguefitness.com), and on the RockTape packaging:

- 20           • Go stronger, longer<sup>12</sup>
- 21           • “PAIN\* STOPS HERE”<sup>13</sup>
- 22           • “Pain stops\* with RockTape Kinesiology Tape”<sup>14</sup>

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26 <sup>10</sup> <https://www.roguefitness.com/rocktape-2-black-logo> (last visited July 3, 2019).

27 <sup>11</sup> *Id.*

28 <sup>12</sup> [www.rocktape.com](http://www.rocktape.com) (last visited July 3, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> [www.rocktape.com/consumers/products/rocktape/overview](http://www.rocktape.com/consumers/products/rocktape/overview) (last visited July 3, 2019).

- 1 • “Soothe pain\* and improve athletic performance with RockTape Kinesiology Tape”<sup>15</sup>
- 2
- 3 • “Turns down the volume on pain\*”<sup>16</sup>
- 4 • “Decompresses swelling and inflammation”<sup>17</sup>
- 5 • “Delays fatigue”<sup>18</sup>
- 6 • “Relieves swelling through decompression which speeds recovery”<sup>19</sup>
- 7
- 8 • “It can be used to treat sports and non-sports injuries, including shin splints, plantar fasciitis, runner’s knee and back pain\*”<sup>20</sup>

9 26. Defendants have continuously promoted the falsehood that RockTape differs from,  
10 and is superior to, traditional athletic tape by claiming on the package that “[u]nlike conventional  
11 tape which constricts blood-flow, RockTape lifts the skin away from muscles, which increases  
12 blood flow.”<sup>21</sup>

13  
14 27. Similarly, on the RockTape website, under the heading, “**HOW KINESIOLOGY**  
15 **TAPE WORKS,**” and the sub-heading “**Decompresses swelling and inflammation,**”  
16 Defendants claim, “[w]hen RockTape is applied to the skin, it has a microscopic lifting effect  
17 underneath the skin and between the many layers. This allows the by-products created by  
18 inflammation to be removed more quickly.”<sup>22</sup>

19 28. There is some suggestion in the relevant literature that consumers could benefit  
20 from a placebo effect when using kinesiology tape: “Some experts have suggested there may be a  
21 placebo effect in using the tape, with athletes believing it will be helpful,” [but] “[n]o clinically  
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23  
24 <sup>15</sup> *Id.*

25 <sup>16</sup> [www.rocktape.com/consumers/products/rocktape/how-it-works](http://www.rocktape.com/consumers/products/rocktape/how-it-works) (last visited July 3, 2019).

26 <sup>17</sup> *Id.*

27 <sup>18</sup> *Id.*

28 <sup>19</sup> <http://shop.rocktape.com/2-black-rocktape-pre-cut/> (last visited July 3, 2019).

<sup>20</sup> *Id.*

<sup>21</sup> See photograph 5 in Paragraph 20 above and photograph 3 in Paragraph 21 above.

<sup>22</sup> <https://www.rocktape.com/medical/products/rocktape/how-it-works/> (last visited July 3, 2019).

1 important results were found to support the tape's use for pain relief."<sup>23</sup> Defendants do not  
2 disclose to consumers that if there are any health benefits to be obtained from RockTape, they are  
3 limited to the placebo effect.

4 29. Through misleading statements in their labeling, advertising, and marketing of  
5 RockTape, Defendants have promoted the myth that their Products work to treat numerous sports-  
6 related (and non-sports-related) injuries, enhance performance and relieve pain. Defendants  
7 profit handsomely by making misleading claims about such qualities.

8 30. Unfortunately for consumers, the pain relief, performance enhancement and injury  
9 treatment claims made by Defendants are false, deceptive, and misleading. RockTape is not the  
10 panacea it is claimed to be by Defendants.

11 31. Defendants dupe consumers with false and misleading promises of results they  
12 know they cannot deliver; and do so with one goal in mind – selling larger volumes of RockTape  
13 to consumers and reaping enormous profits.

14 32. As explained more fully herein, Defendants have made, and continue to make,  
15 false, deceptive and misleading claims and promises to consumers about the efficacy of  
16 RockTape in a pervasive marketing scheme that misleads consumers about the true nature of the  
17 products. RockTape Products do not perform as claimed by Defendants.

18 33. The premise that there are any health benefits or performance enhancement to be  
19 derived by tensioning or adjusting the skin through the application of stretchable sports tape  
20 (kinesio tape), such as increasing blood flow, is not supported by scientific evidence, and is not  
21 accepted by the medical community.

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<sup>23</sup> Kinesio Tape for Athletes: A Big Help, or Hype? <http://www.webmd.com/fitness-exercise/kinesio-tape-athletes-help-hype> (last visited July 3, 2019).

1           34. To the contrary, there are numerous recently published studies and reviews that  
2 reveal the ineffective and useless nature of kinesiology tape. The conclusions of these studies and  
3 reviews unmask the deception utilized by Defendants to market RockTape:

- 4           • Conclusion: “This review provides the most updated evidence on the  
5 effectiveness of the Kinesio Taping for musculoskeletal conditions. The  
6 current evidence does not support the use of this intervention in these clinical  
7 populations.”<sup>24</sup>
- 8           • Conclusion: “The application of Kinesio Taping, with the aim of stimulating  
9 the lymphatic system, is ineffective in decreasing acute swelling after an  
10 ankle sprain in athletes.”<sup>25</sup>
- 11          • Conclusion: “Kinesio Taping applied with stretch to generate convolutions in  
12 the skin was no more effective than simple application of the tape without  
13 tension for the outcomes measured. These results challenge the proposed  
14 mechanism of action of this therapy.”<sup>26</sup>
- 15          • Conclusion: “There was no substantial evidence to support the use of [kinesio  
16 tape] for improvements in other musculoskeletal outcomes (pain, ankle  
17 proprioception or muscle activity).”<sup>27</sup>
- 18          • Conclusions: “No differences between [the kinesio taping group and the  
19 control group] were observed . . . in most balance measurements. Any  
20 observed improvements in the kinesio group “may be related to a subjective  
21 increase in confidence after the tape application.” In other words, “the belief  
22 among athletes that taping will protect them from injury means that taping  
23 may have a subjective perception of security [a placebo effect].”<sup>28</sup>

24 *Current evidence does not support the use of Kinesio Taping in clinical practice: a systematic review*, Journal of Physiotherapy 60 (2014), at 31-39 (last visited July 3, 2019 from <http://www.sciencedirect.com/science/article/pii/S1836955314000095>).

25 *Kinesio Taping does not decrease swelling in acute, lateral ankle sprain of athletes: a randomised trial*, Journal of Physiotherapy 61 (2015), at 28-33 (last visited July 3, 2019 from <http://www.sciencedirect.com/science/article/pii/S1836955314001489>).

26 *Kinesio Taping to generate skin convolutions is not better than sham taping for people with chronic non-specific low back pain: a randomised trial*, Journal of Physiotherapy 60 (2014) 90–96 (last visited July 3, 2019 from <http://www.sciencedirect.com/science/article/pii/S1836955314000368>).

27 *Kinesio Taping in Treatment and Prevention of Sports Injuries A Meta-Analysis of the Evidence for its Effectiveness*, Sports Medicine (Auckland, N.Z.) [Sports Med] 2012 Feb 1; Vol. 42 (2), pp. 153-64.

28 *Effect of Kinesiology Tape on Measurements of Balance in Subjects with Chronic Ankle Instability: A Randomized Controlled Trial* (Archives of Physical Medicine and Rehabilitation 2015; 96: 2169-75).



- 1 • Conclusion: “our results do not support the claim that [kinesio taping] improves muscle endurance.”<sup>29</sup>
- 2
- 3 • Conclusion: “The application of [kinesio tape] immediately before physical effort, as performed in this study, does not improve muscle performance. It can be assumed that [kinesio tape] applied in this study onto thigh muscles is ineffective in improving muscle strength and hence presumably does not enhance knee joint protection by dynamic stabilization.”<sup>30</sup>
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- 7 • Conclusion: “the use of Kinesio Taping in isolation provides no benefit to patients with chronic low back pain.” In addition, “[p]atients with low back pain will not get additional benefit from the use of Kinesio Taping if they receive a treatment consisting of individualized exercise and manual therapy.”<sup>31</sup>
- 8
- 9
- 10 • Conclusion: “we cannot support the application of [patellofemoral joint] [Kinesio] taping using a medial correction technique with the intent to alter the [patellofemoral joint] contact area or alignment of the patella during weight bearing.”<sup>32</sup>
- 11
- 12

13 35. Pseudoscience, deceptive and misleading claims of purported health benefits--  
 14 instead of valid research and innovation and actual ability to treat injuries and provide pain relief-  
 15 - are responsible for the sales of RockTape.

16  
 17 36. As a result of Defendants’ false claims about the benefits of RockTape,  
 18 consumers, including Plaintiff and other Class members, have paid a premium price for products  
 19 that do not perform as claimed and advertised. Despite RockTape’s logo and tagline, “Go  
 20

21 <sup>29</sup> *The Effect of Elastic Therapeutic Taping on Back Extensor Muscle Endurance in Patients with Low Back Pain: A Randomized, Controlled, Crossover Trial* (Journal of Orthopaedic & Sports Physical Therapy, Vol. 45, No. 3, 215-219, March 2015).

22  
 23 <sup>30</sup> *Kinesio Taping does not Alter Quadriceps Isokinetic Strength and Power in Healthy Nonathletic Men: A Prospective Crossover Study* (BioMed Research International, Volume 215, Article ID 62657, 5 pages), accepted December 8, 2015.

24  
 25 <sup>31</sup> *Kinesio Taping Does not Provide Additional Benefits in Patients with Chronic Low Back Pain Who Receive Exercise and Manual Therapy: A Randomized Controlled Trial* (Journal of Orthopaedic & Sports Physical Therapy, Vol. 46, No. 7, 506-513, July 2016).

26  
 27 <sup>32</sup> *Effects of Patellofemoral Taping on Patellofemoral Joint Alignment and Contact Area During Weight Bearing* (Journal of Orthopaedic & Sports Physical Therapy, Vol. 47, No. 2, 115-123, February 2017).

1 stronger, longer,” which appears on every package and on the websites that sell the Products, as  
2 well as their claims that also appear on every package and on the websites that sell the Products  
3 that the Products “treat sport[s] injuries,” “delay fatigue,” and “enhance performance,” and  
4 Defendants’ other aforementioned representations, the scientific studies performed on kinesio  
5 tape contradict Defendants’ representations about the qualities of RockTape as described above.

6  
7 37. Defendants have been able to charge, and Plaintiff and the other members of the  
8 proposed Class have paid, a price premium for RockTape over traditional athletic tape.  
9 Defendants have used deceptive claims regarding the purported benefits of RockTape to charge a  
10 premium of several times the price of traditional athletic tape, and they have achieved significant  
11 sales of RockTape as a result.

12  
13 38. Defendants’ false, deceptive and misleading representations about the pain-  
14 relieving, injury-treating, and performance-enhancing properties of RockTape were and are  
15 material; there would be no reason for a consumer to purchase RockTape and pay a premium  
16 price for it (over and above the price of traditional athletic tape) if not for the claims and  
17 representations about RockTape’s ability to relieve pain, treat a variety of injuries, and enhance  
18 performance.

19  
20 39. Defendants sell RockTape Products to consumers in California and throughout the  
21 United States through various channels, including through independent retailers (such as Dick’s  
22 Sporting Goods, REI, Wal-Mart, Rogue Fitness, and Amazon.com) and through the RockTape  
23 website, [www.rocktape.com](http://www.rocktape.com).

24  
25 40. Implus, since its acquisition of Tumbleweed, has been an active participant in  
26 making the claims and representations about the Products that are the subject of this action.  
27  
28

1 Implus LLC owns the copyright for the RockTape website on which many of the false and  
2 misleading claims about the Products alleged herein are made.<sup>33</sup>

3 41. As stated above, Plaintiff purchased RockTape from the Rogue Fitness website,  
4 www.roguefitness.com, for personal use during the Class Period.

5 42. Plaintiff saw and read the misrepresentations on the Rogue Fitness website that are  
6 attributable to Defendants as alleged herein and on the RockTape packaging (as pictured on the  
7 Rogue Fitness website), including the claims that RockTape can be used to treat sports injuries,  
8 that it will delay fatigue and that it will enhance athletic performance and recovery. These claims  
9 and representations were material to Plaintiff's purchase of RockTape.  
10

11 43. Plaintiff purchased RockTape based on Defendants' material misrepresentations  
12 and would not have purchased RockTape, or he would not have paid a premium price for it, had  
13 Defendants not made such false, misleading and deceptive claims and instead disclosed the true  
14 nature of the Product.  
15

16 44. Despite Plaintiff's use of this Product as instructed on the packaging, the  
17 RockTape did not perform as claimed and advertised.  
18

### 19 CLASS ALLEGATIONS

20 45. Plaintiff brings this action as a class action, pursuant to Fed. R. Civ. P. 23, on  
21 behalf of a Class consisting of:

22 All persons who purchased RockTape in the United States, for personal use  
23 and not for re-sale, during the applicable limitations period (the "Class").

24 46. Plaintiff also brings this action on behalf of the following subclass:

25 All persons who purchased RockTape in California, for personal use and  
26 not for re-sale, during the applicable limitations period (the "California  
27 Subclass") (the Class and the California Subclass are sometimes referred to  
28 herein collectively as the "Class").

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<sup>33</sup> <https://www.rocktape.com/about-us/contact-rocktape/> (last visited July 3, 2019).



1           47. Excluded from the Class are Defendants and their subsidiaries and affiliates,  
2 governmental entities, and the judge to whom this case is assigned and any immediate family  
3 members thereof. Plaintiff reserves the right to modify or amend the Class definition, as  
4 appropriate.

5           48. Certification of Plaintiff's claims for class-wide treatment is appropriate because  
6 Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as  
7 would be used to prove those elements in individual actions alleging the same claims.  
8

9           49. **Numerosity – Fed. R. Civ. P. 23(a)(1).** The Class is so numerous that individual  
10 joinder of all Class members is impracticable. Plaintiff is informed and believes that there are at  
11 least hundreds, if not thousands, of Class members. The precise number of Class members and  
12 their addresses are unknown to Plaintiff but may be ascertained from Defendants' books and  
13 records. Class members may be notified of the pendency of this action by recognized, Court-  
14 approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet  
15 postings, social media, and/or published notice.  
16

17           50. **Commonality and Predominance – Fed. R. Civ. P. 23(a)(2) and 23(b)(3).** This  
18 action involves common questions of law and fact, which predominate over any questions  
19 affecting only individual Class members. All Class members were subject to the same business  
20 practices complained of, Defendants' marketing and sales of RockTape, including on the  
21 package, RockTape website and third-party online retailer websites, including  
22 www.roguefitness.com, about RockTape's ability to relieve pain and treat a variety of injuries,  
23 and they purchased the Products as a result of those claims and representations.  
24

25           51. There are questions of law and fact common to the Class, which predominate over  
26 any issues specific to individual Class members. The principal common questions include:

- 27           a) whether Defendants advertise or market the Products in a way that is false,  
28           deceptive, or misleading;

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- b) whether, by the misconduct set forth in this Complaint, Defendants have engaged in unfair, deceptive or unlawful business practices with respect to the labeling, advertising, marketing and sales of the Products;
- c) whether Defendants failed to disclose material facts regarding the Products;
- d) whether Defendants violated the California Consumer Legal Remedies Act, Cal. Civil Code, § 1750; the California False Advertising Law, Cal. Bus. & Prof. Code § 17500; and/or the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200;
- e) whether Defendants breached implied and/or express warranties in connection with the sale of RockTape to Plaintiff and Class members;
- f) whether Defendants were unjustly enriched by their conduct; and
- g) whether, as a result of Defendants’ misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

52. **Typicality – Fed. R. Civ. P. 23(a)(3).** Plaintiff’s claims are typical of the claims of the other members of the Class and California Subclass because, among other things, all Class members were similarly injured through the uniform misconduct described herein, and all Class members have the same claims, *i.e.*, that Defendants made false and misleading product claims.

53. **Adequacy of Representation – Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Class he seeks to represent; he has retained counsel competent and experienced in class action litigation; and Plaintiff intends to prosecute this action vigorously. The Class’s interests will thus be fairly and adequately protected by Plaintiff and his counsel.

54. **Superiority – Fed. R. Civ. P. 23(b)(3).** A class action is superior to any other available methods for fairly and efficiently adjudicating this controversy, and no unusual difficulties are likely to be encountered in the management of this case as a class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be required to individually

1 litigate their claims against Defendants, so it would be impracticable for Class members to  
2 individually seek redress for Defendants’ wrongful conduct. Even if the Class members could  
3 afford individual litigation, the court system could not. Individualized litigation creates a  
4 potential for inconsistent or contradictory judgments and increases the delay and expense to all  
5 parties and the court system. By contrast, the class action device presents far fewer management  
6 difficulties, and provides the benefits of single adjudication, economy of scale, and  
7 comprehensive supervision by a single court.  
8

9         **55. Fed. R. Civ. P. 23(b)(2).** Defendants have acted in a uniform manner on grounds  
10 generally applicable to Plaintiff and the other members of the Class in misrepresenting their  
11 Products so that final declaratory and injunctive relief as requested herein are appropriate with  
12 respect to the Class as a whole.  
13

14   **CLAIMS FOR RELIEF**

15   **COUNT I**

16   **UNJUST ENRICHMENT/QUASI-CONTRACT**

17   **(On Behalf of Plaintiff and the Class or, In the Alternative, the California Subclass)**

18   **(Pleaded in the Alternative to other Claims)**

19         **56.** Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
20 – 55 as if fully set forth herein.  
21

22         **57.** This claim is asserted in the alternative should there be no adequate remedies at  
23 law.  
24

25         **58.** In making his purchase decision, Plaintiff relied on the representations discussed  
26 hereinabove contained on the website [www.roguefitness.com](http://www.roguefitness.com), which were attributable to  
27 Defendants, and which included a picture of the package provided to that online retailer by  
28 Defendants.  
29

1           59. Plaintiff and the Class and California Subclass members conferred a benefit on  
2 Defendants by purchasing RockTape, either directly, through retailers or through third-party  
3 online retailers, that was not as represented and advertised. Defendants are aware that customers  
4 purchased their RockTape based at least in part on the representations alleged herein.  
5

6           60. Defendants' retention of the monies paid for Products that are not as they are  
7 represented and advertised to be by Defendants, either directly or through third-party online  
8 retailers via information provided by Defendants to such retailers, violates the principles of  
9 justice, equity and good conscience.

10           61. Plaintiff paid money, as set forth above, to purchase RockTape that was not as  
11 represented by Defendants. Similarly, Class and California Subclass members paid money for  
12 RockTape Products that were not as they were represented to be, either directly by Defendants or  
13 through third-party online retailers via information provided by Defendants to such retailers.  
14

15           62. It would be inequitable and unjust for Defendants to retain the benefit of such  
16 monies obtained from Plaintiff and the Class and California Subclass because Defendants  
17 misrepresented the Products, either directly or through third-party online retailers via information  
18 provided by Defendants to such retailers.

19           63. As a result, Plaintiff and the members of the Class and California Subclass are  
20 entitled to restitution from Defendants in the amount by which Defendants were unjustly enriched  
21 through sales of their RockTape Products that were misrepresented as to their qualities.  
22

23           64. Plaintiff, on behalf of himself and the other members of the Class and California  
24 Subclass, seeks restitution or, in the alternative, imposition of a constructive trust on the funds  
25 inequitably received and retained.  
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**COUNT II**

**BREACH OF EXPRESS WARRANTY**

**(On Behalf of Plaintiff and the Class or, in the Alternative, the California Subclass)**

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4       65. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
5 55 above as if fully set forth herein.

6       66. Defendants were at all relevant times merchants and sellers. The third-party online  
7 retailer www.roguefitness.com, through which Plaintiff purchased the RockTape, is also a  
8 merchant and a seller as are all such third-party online retailers. When third-party online retailers  
9 sell RockTape Products, they advertise and sell them using the information provided directly  
10 from Defendants regarding the Products, including by posting a picture of the RockTape package.

11       67. Plaintiff relied on the representations by Defendants through  
12 www.roguefitness.com regarding the benefits promised from the Products as described  
13 hereinabove. Had Plaintiff known the truth about the Products, *i.e.*, that they were not as  
14 represented by Defendants through www.roguefitness.com and as stated on the package, he  
15 would not have purchased the RockTape, or would have paid less for it.

16       68. The RockTape Products are goods and Plaintiff and the Class and California  
17 Subclass members purchased the RockTape Products in a consumer transaction.

18       69. Defendants expressly warranted the promises discussed hereinabove to all  
19 purchasers, either directly, by making representations on the RockTape website, on the package  
20 itself, or by providing information to third-party online retailers who then made similar  
21 representations on their websites and posted a picture of the package containing the  
22 representations. Plaintiff and the other members of the Class and California Subclass, prior to  
23 making their purchases, relied on these express warranties and they formed a part of the basis of  
24 the bargain, as described above.

25       70. Because Defendants made the representations discussed above directly on the  
26 package or on their own website, or provided such information to third-party online retailers who  
27 provided it on their websites, including by posting a picture of the package, Defendants  
28 communicated directly to purchasers, including Plaintiff and the members of the Class and

1 California Subclass, prior to their purchases.

2 71. Defendants breached their express warranty to Plaintiff and the other members of  
3 the Class and California Subclass because their Products do not perform as represented by  
4 Defendants, either directly to Plaintiff and the Class and California Subclass or through third-  
5 party retailers.

6 72. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class  
7 and California Subclass suffered injury and damages in an amount to be determined at trial.

8 73. On February 6, 2019, counsel for Plaintiff sent Defendants a notice letter (attached  
9 hereto as Exhibit A) via certified mail, return receipt requested, advising them that they had  
10 breached their warranties under California law and requested appropriate class wide relief.

11 74. Defendants, through counsel, responded on March 8, 2019 but did not agree to  
12 take the remedial action requested by Plaintiff for himself and other similarly situated purchasers  
13 of the Products.

14 75. As a result, Plaintiff and the members of the Class and California Subclass are  
15 entitled to damages in an amount to be determined at trial.

16  
17 **COUNT III**

18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

19 **(On Behalf of Plaintiff and the Class or, in the Alternative, the California Subclass)**

20 76. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
21 55 above as if fully set forth herein.

22 77. Defendants were at all relevant times merchants and sellers. The third-party online  
23 retailer [www.roguefitness.com](http://www.roguefitness.com), through which Plaintiff purchased the Product, is also a merchant  
24 and a seller as are all such third-party online retailers. When third-party online retailers sell  
25 RockTape Products, they advertise and sell them using the information provided directly from  
26 Defendants regarding the Products, including by posting a picture of the RockTape package.  
27

28 78. The RockTape Products are goods and Plaintiff and the Class and California

1 Subclass members purchased them in a consumer transaction.

2 79. The implied warranty of merchantability requires that goods be fit for the ordinary  
3 purposes for which goods of that type are used; have adequate labeling; and conform to any  
4 promises or affirmations made on any product label.

5 80. Defendants breached their implied warranties to Plaintiff and the Class and  
6 California Subclass because the RockTape Products did not have the qualities stated on the  
7 package, on Defendants' website, or on third-party online retailers' websites based on the  
8 information provided to such retailers by Defendants and, as such, were not fit for their ordinary  
9 purpose, did not have adequate labeling, and did not conform to the promises or affirmations  
10 made. As alleged above, these representations were of material significance to purchasers of  
11 RockTape Products.  
12

13 81. Defendants' implied warranties extend to Plaintiff and the Class and California  
14 Subclass because Defendants knew the purposes for which Plaintiff and the Class and California  
15 Subclass were purchasing the RockTape and Defendants manufactured the RockTape for those  
16 purposes. Defendants knew that Plaintiff and the Class and California Subclass were making  
17 such purchases based upon, among other things, the representations about the ability of the  
18 Products to treat injuries, delay fatigue, and enhance performance. Defendants sell directly to  
19 consumers, in retail stores, or authorize online retailers to sell their Products including by posting  
20 pictures of the package which contains the promises discussed above, and know that consumers  
21 rely on their expertise to properly, accurately and truthfully represent the qualities of their  
22 Products, either directly to consumers or to third-party online retailers who then provide that  
23 information to consumers, including Plaintiff and the Class and California Subclass.  
24

25 82. Because Defendants made representations directly on the package or on their own  
26 website, or provided such information to third-party online retailers who provided it on their  
27  
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1 websites, including by posting pictures of the package, Defendants communicated directly to  
2 purchasers, including Plaintiff and the members of the Class and California Subclass, prior to  
3 their purchases. Defendants knew that consumers, including Plaintiff, the Class and the  
4 California Subclass, were the ultimate consumers and the targets of the third-party online  
5 retailers, who were authorized to sell their Products, and intended consumers to rely on the  
6 representations as to the quality of the Products and they were thus the intended beneficiaries of  
7 the implied warranties.  
8

9 83. Plaintiff relied on the representation on [www.roguefitness.com](http://www.roguefitness.com), including the  
10 package pictured on the website, which was based on and contained information provided by  
11 Defendants. Had Plaintiff known the truth about the RockTape, *i.e.*, that it was not as represented  
12 by [www.roguefitness.com](http://www.roguefitness.com) through Defendants, including on the pictured box, he would not have  
13 purchased the RockTape, or would have paid less for it.  
14

15 84. Plaintiff and the Class and California Subclass did not receive Products as  
16 represented to them either directly by Defendants or through third-party retailers based on  
17 information provided by Defendants because the Products do not perform as represented and thus  
18 were not fit for their ordinary purpose, *i.e.*, the particular purpose for which they were sold.  
19

20 85. In fact, because the RockTape did not provide any of the promised benefits to  
21 Plaintiff, he ultimately ceased using it as applying tape to your body when exercising that does  
22 not provide any benefits is counterproductive to achieving a good work-out.

23 86. Thus, Defendants breached their implied warranties to Plaintiff and the Class and  
24 California Subclass. As a direct and proximate result of such breach of implied warranties by  
25 Defendants, Plaintiff and the members of the Class and California Subclass suffered actual  
26 monetary damages in an amount to be determined at trial.  
27

28 87. On February 6, 2019, counsel for Plaintiff sent Defendants a notice letter (attached



1 hereto as Exhibit A) via certified mail, return receipt requested, advising them that they had  
2 breached their warranties under California law and requested appropriate class-wide relief.

3 88. Defendants, through counsel, responded on March 8, 2019 but did not agree to  
4 take the remedial action requested by Plaintiff for himself and other similarly situated purchasers  
5 of the Products.

6  
7 **COUNT IV**

8 **Cal. Bus. & Prof. Code § 17200, et seq.**

9 **(On Behalf of Plaintiff and the Class or, in the Alternative, the California Subclass)**

10 89. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
11 55 above as if fully set forth herein.

12 90. Plaintiff has standing to pursue this claim under California's Unfair Competition  
13 Law ("UCL") because he suffered an injury-in-fact and lost money as a result of Defendants'  
14 practices. Specifically, had Plaintiff known the truth about the qualities of the RockTape, that it  
15 was not as represented by Defendants on [www.roguefitness.com](http://www.roguefitness.com) through information provided by  
16 Defendants, including on the picture of the box, he would not have purchased the RockTape, or  
17 would have paid less for it.

18 91. In making his purchase decision, Plaintiff relied on the representations regarding  
19 RockTape contained on the website [www.roguefitness.com](http://www.roguefitness.com), which was provided to that online  
20 retailer by Defendants (including through the picture of the box). However, scientific studies  
21 show that such claims are false and misleading in that they do not provide the benefits  
22 represented by Defendants on the Products' box, which was pictured on the Rogue Fitness  
23 website, or as stated on the website, based on information that was provided by Defendants.

24 92. Defendants' act of misrepresenting the qualities of the Products, including the  
25 Product purchased by Plaintiff, either on the box, on their own website, or by providing  
26 information to third-party online retailers, constitutes a course of unfair conduct within the  
27 meaning of Cal. Civ. Code § 17200, *et seq.*

28 93. The conduct of Defendants harms the interests of consumers and market

1 competition. There is no valid justification for Defendants' conduct. The consumer injury is  
2 substantial because, for the reasons discussed hereinabove, the misrepresented qualities are so  
3 critical to the purchase decision. Consumers could not reasonably have avoided the injury as they  
4 have no reasonable way to test RockTape prior to purchase.

5 94. Defendants engaged in unlawful business acts and practices by violating § 17500,  
6 Cal. Bus. & Prof. Code and the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*,  
7 as alleged in Counts V and VI below, respectively.

8 95. Defendants engaged in fraudulent business acts or practices and deceptive, untrue  
9 or misleading advertising under § 17200 by knowingly misrepresenting the Products as having  
10 qualities materially different than what they actually have, as described above, either directly to  
11 consumers or by providing information to third-party online retailers who then provide it to  
12 consumers on their websites (as in Plaintiff's situation). Such practices are devoid of utility and  
13 outweighed by the gravity of harm to Plaintiff and the Class and California Subclass who lost  
14 money by paying for the Products believing they were as represented when they in fact were not.

15 96. Plaintiff, the Class and California Subclass and members of the public were likely  
16 to be deceived by the misrepresentation of the qualities of the Products inasmuch as such qualities  
17 are significant factors in such a purchase.

18 97. Defendants knew or should have known that qualities that they stated on the label,  
19 provided on their website, and provided to third-party online retailers to post on their websites,  
20 were false and misleading in that as the manufacturers and distributors of the Products, they test  
21 the Products and determine how to label them. As the manufacturers and distributors of the  
22 Products at issue, Defendants were in control of the labels placed on the Products and the  
23 representations made about them.

24 98. Each of Defendants' unfair, unlawful, and fraudulent/deceptive/misleading  
25 practices enumerated above was the direct and proximate cause of financial injury to Plaintiff and  
26 the Class and California Subclass. Defendants have unjustly benefitted as a result of their  
27 wrongful conduct. Plaintiff and Class and California Subclass members are accordingly entitled  
28 to have Defendants disgorge and restore to Plaintiff, Class and California Subclass members all

1 monies wrongfully obtained by Defendants as a result of the conduct as alleged herein.

2 99. Plaintiff is also seeking injunctive relief on behalf of himself and the Class and  
3 California Subclass. Plaintiff continues to engage in physical activity and has aches and pains  
4 associated therewith. There is a threat of future harm because as Plaintiff continues to exercise  
5 and age, he is likely to continue to experience such aches and pains. Plaintiff would buy  
6 RockTape in the future if Defendants would correctly identify the true qualities of the Products,  
7 and also inform third-party online retailers of the true qualities of the Product, so that Plaintiff  
8 does not apply tape to his body during physical activity that does not provide the benefits  
9 represented by Defendants and forego other treatments in reliance on the effectiveness of the  
10 Products instead. Plaintiff is currently unable to rely on the accuracy of the labeling and  
11 advertising of the Products. He will purchase RockTape Products in the future if they are  
12 correctly labeled but without injunctive relief to ensure the accuracy of the labeling and  
13 advertising there is still a risk of future harm.

14 **COUNT V**

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

16 **(On Behalf of Plaintiff and the Class or, in the Alternative, the California Subclass)**

17 100. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
18 55 above as if fully set forth herein.

19 101. California Bus. and Prof. Code § 17500 prohibits untrue or misleading advertising.

20 102. Plaintiff has standing to pursue this claim under § 17500 because he suffered an  
21 injury-in-fact and lost money as a result of Defendants' practices. Specifically, had Plaintiff  
22 known the truth about the qualities of the Products, that they are not as represented on  
23 www.roguefitness.com through information provided by Defendants, including on the box  
24 pictured on the website, he would not have purchased the RockTape, or would have paid less for  
25 it.

26 103. In making his purchase decision, Plaintiff relied on the representations regarding  
27 the RockTape contained on the website www.roguefitness.com, which was provided to that  
28 online retailer by Defendants (including through the picture of the box). However, scientific

1 studies show that such claims are false and misleading in that they do not provide the benefits  
2 represented by Defendants on the Products' box, which was pictured on the Rogue Fitness  
3 website, or as stated on the website, which information was provided by Defendants.

4 104. Advertising and labeling the Products as having certain qualities when they do not  
5 have such qualities constitutes a deceptive, untrue, and misleading advertising practice by  
6 Defendants under § 17500.

7 105. Defendants knew or should have known that qualities that they stated on the label,  
8 provided on their website, and provided to third-party online retailers to post on their websites,  
9 were false and misleading in that as the manufacturer and distributor of the Products, they test the  
10 Products and determine how to label them. As the manufacturer and distributor of the Products at  
11 issue, Defendants were in control of the label placed on the Products and the representations  
12 made about them.

13 106. Such practices are devoid of utility and outweighed by the gravity of harm to  
14 Plaintiff and the Class and California Subclass who lost money by paying for the Products that  
15 were mislabeled as to their actual qualities.

16 107. Plaintiff, the Class and California Subclass and members of the public were likely  
17 to be deceived by the misrepresentation of the qualities of the Products inasmuch as such qualities  
18 are significant factors in such a purchase.

19 108. Each of Defendants' practices of untrue or misleading advertising enumerated  
20 above was the direct and proximate cause of financial injury to Plaintiff and the Class and  
21 California Subclass. Defendants have unjustly benefitted as a result of their wrongful conduct.  
22 Plaintiff and Class and California Subclass members are accordingly entitled to have Defendants  
23 disgorge and restore to Plaintiff and Class and California Subclass members all monies  
24 wrongfully obtained by Defendants as a result of the conduct as alleged herein.

25 109. Plaintiff is also seeking injunctive relief on behalf of himself and the Class and  
26 California Subclass. Plaintiff continues to engage in physical activity and has aches and pains  
27 associated therewith. There is a threat of future harm because as Plaintiff continues to exercise  
28 and age, he is likely to continue to experience such aches and pains. Plaintiff would buy

1 RockTape in the future if Defendants would correctly identify the true qualities of the Products,  
2 and also inform third-party online retailers of the true qualities of the Product, so that Plaintiff  
3 does not apply tape to his body during physical activity that does not provide the benefits  
4 represented by Defendants and forego other treatments in reliance on the effectiveness of the  
5 Products instead. Plaintiff is currently unable to rely on the accuracy of the labeling and  
6 advertising of the Products. He will purchase RockTape Products in the future if they are  
7 correctly labeled but without injunctive relief to ensure the accuracy of the labeling and  
8 advertising there is still a risk of future harm.

9 **COUNT VI**

10 **CAL. CIV. CODE § 1750, *et seq.***

11 **(On Behalf of Plaintiff and the Class or, in the Alternative, the California Subclass)**

12 110. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-  
13 55 above as if fully set forth herein.

14 111. The Consumers Legal Remedies Act (“CLRA”) was enacted to protect consumers  
15 against unfair and deceptive business practices. The CLRA applies to Defendants’ acts and  
16 practices because the Act covers transactions involving the sale of goods to consumers.

17 112. Plaintiff and members of the Class and California Subclass are “consumers” within  
18 the meaning of § 1761(d) of the California Civil Code, and they engaged in “transactions” within  
19 the meaning of §§ 1761(e) and 1770 of the California Civil Code, including the purchases of the  
20 Products.

21 113. Defendants are “person[s]” under Cal. Civ. Code § 1761(c).

22 114. The Products are “goods” under Cal. Civ. Code §1761(a).

23 115. Defendants’ unfair and deceptive business practices were intended to and did  
24 result in the sale of the Products.

25 116. Defendants violated the CLRA by engaging in the following unfair and deceptive  
26 practices:

27 a) representing, either directly to consumers or by providing information to third-  
28



1 party online retailers who then post the information on their websites, including by  
2 posting a picture of the box, that RockTape Products have characteristics, uses, or  
3 benefits that they do not have, in violation of §1770(a)(5);

4 b) representing, either directly to consumers or by providing information to third-  
5 party online retailers who then post the information on their websites, including by  
6 posting a picture of the box, that the Products are of a particular standard, quality,  
7 or grade when they are not, in violation of § 1770(a)(7); and

8 c) advertising, either directly to consumers or by providing information to third-party  
9 online retailers who then post the information on their websites, including by  
10 posting a picture of the box, the Products with the intent not to sell them as  
11 advertised, in violation of § 1770(a)(9).

12 117. In making his purchase decision, Plaintiff relied on the representations regarding  
13 RockTape contained on the website [www.roguefitness.com](http://www.roguefitness.com), which was provided to that online  
14 retailer by Defendants (including through the picture of the box). However, scientific studies  
15 show that such claims are false and misleading in that they do not provide the benefits  
16 represented by Defendants on the Products' box, which was pictured on the Rogue Fitness  
17 website, or as stated on the website, which information was provided by Defendants.

18 118. If Plaintiff and the Class and California Subclass members had known that the  
19 Products did not have the qualities represented by Defendants to have, they would not have  
20 purchased them at all or would not have purchased them at the prices they did.

21 119. Plaintiff, the Class and California Subclass and members of the public were likely  
22 to be deceived by the misrepresentation of the qualities of the Products inasmuch as such qualities  
23 are significant factors in such a purchase.

24 120. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class  
25 and California Subclass suffered injury and damages in an amount to be determined at trial.

26 121. Pursuant to California Civil Code § 1782(a), on February 6, 2019, counsel for  
27 Plaintiff sent Defendants a notice letter (attached hereto as Exhibit A) via certified mail, return  
28 receipt requested, advising Defendants that they had violated the CLRA and must correct, repair,

1 replace, or otherwise rectify the goods alleged to be in violation of § 1770 for himself and other  
2 similarly situated purchasers of RockTape Products.

3 122. Defendants, through counsel, responded on March 8, 2019, but did not agree to  
4 take the remedial action requested by Plaintiff for himself and other similarly situated purchasers  
5 of the Products.

6 123. Plaintiff seeks monetary relief under the CLRA.

7 124. Plaintiff is also seeking injunctive relief on behalf of himself and the Class and  
8 California Subclass. Plaintiff continues to engage in physical activity and has aches and pains  
9 associated therewith. There is a threat of future harm because as Plaintiff continues to exercise  
10 and age, he is likely to continue to experience such aches and pains. Plaintiff would buy  
11 RockTape in the future if Defendants would correctly identify the true qualities of the Products,  
12 and also inform third-party online retailers of the true qualities of the Product, so that Plaintiff  
13 does not apply tape to his body during physical activity that does not provide the benefits  
14 represented by Defendants and forego other treatments in reliance on the effectiveness of the  
15 Products instead. Plaintiff is currently unable to rely on the accuracy of the labeling and  
16 advertising of the Products. He will purchase RockTape Products in the future if they are  
17 correctly labeled but without injunctive relief to ensure the accuracy of the labeling and  
18 advertising there is still a risk of future harm.

19 125. Plaintiff therefore seeks injunctive and declaratory relief, damages, restitution,  
20 costs, attorneys' fees, and any other relief available under the CLRA.

21 126. Pursuant to section 1780(d) of the CLRA, Plaintiff attaches as Exhibit B an  
22 affidavit showing that this action was commenced in the proper forum.

23  
24 **REQUEST FOR RELIEF**

25 WHEREFORE, Plaintiff, both individually and on behalf of the other members of the  
26 Class proposed in this Complaint, respectfully requests that the Court order the following relief:

27 A. An Order certifying the Class and Subclass as requested herein;  
28

- 1 B. An Order awarding restitution and disgorgement of Defendants' revenues to  
2 Plaintiff and the other members of the proposed Class;
- 3 C. An Order awarding equitable relief, including: enjoining Defendants from  
4 continuing the unlawful false advertising practices as set forth herein, directing  
5 Defendants to retrieve existing false and misleading advertising and promotional  
6 materials, directing Defendants to engage in a corrective advertising campaign,  
7 directing Defendants to identify, with Court supervision, victims of their conduct  
8 and pay them restitution, and disgorgement of all monies acquired by Defendants  
9 by means of any act or practice declared by this Court to be wrongful;
- 10 D. An Order awarding damages to Plaintiff and the Class, as allowable by law;
- 11 E. An Order awarding attorneys' fees and costs to Plaintiff and the other members of  
12 the Class; and
- 13 F. Such other and further relief as may be just and proper.

14 **JURY DEMAND**

15 Plaintiff demands a trial by jury on all issues so triable.

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1 Dated: July 3, 2019

Respectfully submitted,

2 /s/ Michael Liskow

3 Michael Liskow (243899)

4 liskowm@thesultzlawgroup.com

5 Janine L. Pollack

6 Pollackj@thesultzlawgroup.com

**THE SULTZER LAW GROUP P.C.**

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7 Tel: (212) 969-7810

8 Fax: (888) 749-7747

9 C. Mario Jaramillo (195343)

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10 527 South Lake Avenue, Suite 200

11 Pasadena, CA 91101

12 Tel: (877) 360-3383

13 Fax: (866) 686-5590

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**EXHIBIT A**



**The**  
**Sultz**  
**er**  
**Law Group**<sup>P.C.</sup>

*A Complex Litigation & Trial Practice*

NEW YORK | PENNSYLVANIA | NEW JERSEY | CALIFORNIA

**JANINE L. POLLACK**

DIRECT DIAL: 212-969-7810

FACSIMILE: 888-749-7747

pollackj@thesultzlawgroup.com

February 6, 2019

**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Greg van den Dries, CEO  
RockTape, Inc.  
1610 Dell Avenue  
Campbell, CA 95008

Seth Richards, CEO  
John Hall, Esq., VP/General Counsel  
Implus Footcare LLC  
2001 TW Alexander Drive  
Box 13925  
Durham NC 27709

Re: **Notice of Violations of Consumers Legal Remedies Act,  
California Civil Code Sections 1750 through 1784 And Warranty**

Dear Messrs. van den Dries, Richards and Hall:

We represent Mr. Mario DeLaMora, individually as well as on behalf of a putative class of purchasers of RockTape products (the “Products” or “RockTape”).<sup>1</sup> Our client is a citizen and resident of California and believes that the Company<sup>2</sup> has engaged in, and is engaging in, *inter alia*, unfair methods of competition and deceptive and misleading consumer practices in connection with the marketing and sale of the Company’s RockTape, which he has purchased. Mr. DeLaMora purchased the RockTape Black Logo 2” in or around March 2017 for \$18.00 (not including tax) on www.roguefitness.com, based on the claims and representations about RockTape

<sup>1</sup> This term is intended to include all varieties of RockTape, including, without limitation, Standard RockTape, RockTape Rx, RockTape Precut, Digit Tape, Bulk RockTape, RockTape H2O, RockTape Edge and RockTape AR.

<sup>2</sup> The “Company,” as used herein, refers to RockTape, Inc. and any of its current or former parent, subsidiary or affiliated entities, including, without limitation, Implus Footcare LLC.

made by the Company on the box and as repeated on the [www.roguefitness.com](http://www.roguefitness.com) website, as described below.

In selling the Products, our client believes that RockTape, both directly and through [www.roguefitness.com](http://www.roguefitness.com) and other third-party online retailers, misrepresented the qualities of the Products to him and the other purchasers. For example, the packaging for RockTape, a picture of which is shown on [www.roguefitness.com](http://www.roguefitness.com), contains the following representations, among others:

- “Go stronger, longer”
- “Treat Sport Injuries”
- “Delay Fatigue”
- “Enhance Performance”
- “Reduces muscle fatigue and promotes blood flow for faster recovery”
- “Aids in injury treatment”
- “helps athletes manage fatigue and increase their performance”
- “ROCKTAPE IMPROVES ATHLETIC PERFORMANCE by reducing muscle fatigue and promoting proper form.”
- “ROCKTAPE also promotes lymph drainage to remove toxins produced by the body during hard efforts.”
- “Rocktape also helps promote proper form by helping athletes coordinate their movements, which leads to efficiency.”
- “USE FOR:
  - **Running:** planters, knee and shin support
  - **Cycling:** thigh and calf support
  - **Swimming:** shoulder issues
  - **Soccer:** Achilles tendon
  - **Golf:** elbow and lower back
  - **Tennis:** elbow, rotator cuff”

The [www.roguefitness.com](http://www.roguefitness.com) website adopts and repeats these concepts, which were obviously based on information provided by RockTape. For example, it states that the RockTape Black Logo 2” will “**ENHANCE PERFORMANCE AND RECOVERY**. Unlike regular compression garments and tapes, ROCKTAPE’s AR series can be used both to apply compression to promote recovery, or decompression to relieve pain and swelling. Rocktape is

engineered to meet the demands of endurance athletes like runners, swimmers and cyclists.”<sup>3</sup> Moreover, the website states, *inter alia*, that it has “180% stretch, the same elasticity as skin, to promote full range of motion,” and “[t]ighter weave, which enables muscle to more easily snap back to neutral.”<sup>4</sup>

While our client purchased his Rock Tape from [www.roguefitness.com](http://www.roguefitness.com), the RockTape website, [www.rocktape.com](http://www.rocktape.com), makes the following representations, among others, which are consistent with and mirror the representations on [www.roguefitness.com](http://www.roguefitness.com) and on the packaging:

- Go stronger, longer<sup>5</sup>
- “PAIN STOPS HERE”<sup>6</sup>
- “treat injuries and improve sports performance”<sup>7</sup>
- “Pain stops\* with RockTape Kinesiology Tape”<sup>8</sup>
- “Soothe pain\* and improve athletic performance”<sup>9</sup>
- “Pain relief that just won’t quit”<sup>10</sup>
- “Turns down the volume on pain\*”<sup>11</sup>
- “Decompresses swelling and inflammation”<sup>12</sup>
- “Delays fatigue”<sup>13</sup>
- “Relieves swelling through decompression which speeds recovery”<sup>14</sup>
- “It can be used to treat sports and non-sports injuries, including shin splints, plantar fasciitis, runner’s knee and back pain\*”<sup>15</sup>

---

<sup>3</sup> <https://www.roguefitness.com/rocktape-2-black-logo> (last visited January 30, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> [www.rocktape.com](http://www.rocktape.com) (last visited January 30, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> [www.rocktape.com/consumer/products/rocktape/overview](http://www.rocktape.com/consumer/products/rocktape/overview) (last visited January 30, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> [www.rocktape.com/consumer/products/rocktape/how-it-works](http://www.rocktape.com/consumer/products/rocktape/how-it-works) (last visited January 30, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> [www.shop.rocktape.com/2-black-rocktape-pre-cut/](http://www.shop.rocktape.com/2-black-rocktape-pre-cut/) (last visited January 30, 2019).

<sup>15</sup> *Id.*

However, contrary to these representations, there are numerous clinical studies and reports demonstrating that kinesiology tape, or stretchable sports tape, does not perform these functions and is no more effective than standard athletic tape.

We believe that the Company has been aware of these facts during all or part of the time it has sold the Products and has nonetheless persisted with its false representations and omissions of material facts. Accordingly, we contend that the Company has violated and continues to violate, *inter alia*: (i) the provisions of the California Business & Professions Code § 17200, *et seq.*, which prohibit unlawful business acts and practices; and (ii) the Consumers Legal Remedies Act, California Civil Code Section 1750 through 1784 (the “CLRA”), among other statutes and laws.

The Company’s actions and conduct described herein constitute transactions that have resulted in the sale of goods to consumers. Mr. DeLaMora and others similarly situated are consumers as defined by California Civil Code § 1761(d). The Products offered for sale by the Company, both directly and through third-party online retailers, are goods within the meaning of California Civil Code § 1761(a). The Company, either directly or through third-party online retailers, intended to and did in fact sell these items to Mr. DeLaMora and the other consumers victimized by the Company’s scheme. These consumers have suffered damage as a result of the use and employment by the Company of methods, acts and practices described with specificity herein that are declared to be unlawful by Section 1770.

By misrepresenting the true nature of the Products, either directly or through third-party online retailers, the Company has violated the following sections of Section 1770:

- 1770(a)(5): Representing that [the] goods . . . have . . . characteristics, ingredients, uses [or] benefits. . . that they do not have; and
- 1770(a)(7): Representing that [the] goods . . . are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

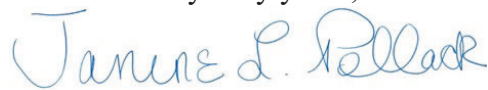
In addition, we believe that the misrepresentations made by the Company, either directly or through third-party online retailers, and the defective quality of the Products constitute a breach of warranty, including but not limited to express and implied warranty, from the Company to our client and other consumers. We believe that the Company, at all relevant times, had actual knowledge of the misrepresentations and/or omissions it made either directly or through third-party online retailers regarding the quality and nature of the Products. While we do not believe notice is required in these circumstances, this letter nonetheless also constitutes statutory notice pursuant to California Uniform Commercial Code § 2-607(3)(A) of the Company’s breach of warranty. The Company breached its warranties with Mr. DeLaMora and all others similarly situated by providing them with Products that were not as the Company represented them to be either directly or through third-party online retailers.

This letter is being served on behalf of our client and all other similarly situated consumers pursuant to CLRA § 1782(a), who hereby demand that the Company: (1) cease and desist the practice of marketing the Products using the misleading tactics complained of herein by eliminating the false and misleading statements used to promote, market and advertise the Products; (2) engage in a corrective advertising campaign concerning the unfair and/or deceptive

acts or practices alleged herein; (3) cease and desist from the unlawful conduct described herein; and (4) reimburse our client and all other similarly situated consumers for the amount that they paid for the Products that were sold during the time the Company used or has continued to use unfair and/or deceptive acts or practices.

Please be advised that we intend to pursue this matter as a class action and therefore expect that any consensual resolution of the issues raised herein must contemplate class-wide relief which approximates the full amount of actual, statutory and punitive damages available under applicable law. Please contact our offices within thirty (30) days of your receipt of this correspondence to discuss this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Janine L. Pollack". The signature is written in a cursive style with a large initial "J" and a distinct "P".

Janine L. Pollack



**EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO DELAMORA, Individually and On  
Behalf of All Others Similarly Situated,  
Plaintiff,

v.

TUMBLEWEED F/K/A ROCKTAPE, INC. and  
IMPLUS FOOTCARE LLC,  
Defendants.

**AFFIDAVIT OF VENUE BY PLAINTIFF  
MARIO DELAMORA PURSUANT TO  
CAL. CIV. CODE § 1780(d)**

I, Plaintiff Mario DeLaMora, hereby declare and state

1. I have personal knowledge of the facts stated herein and could competently testify thereto if called upon to do so.
2. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a).
3. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because Defendant Tumbleweed F/K/A Rocktape, Inc. does business in this District (the Northern District of California) and throughout the state of California, and lists its mailing address as being in this District.
4. I declare under penalty of perjury under the laws of the State of California that the foregoing Declaration is true and correct, and was executed by me in the city of Alta Loma, California on June \_\_, 2019.

  
\_\_\_\_\_  
Mario DeLaMora

7-1-2019

JS-CAND 44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 Mario Delamora, individually and on behalf of all others similarly situated

**(b)** County of Residence of First Listed Plaintiff San Bernardino County, California  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 The Sultz Law Group P.C. (212) 969-7810  
 351 West 54th St., Unit 1C Michael Liskow, Esq.  
 New York, NY 10019

**DEFENDANTS**  
 Tumbleweed f/k/a Rocktape, Inc. and Implus Footcare LLC

County of Residence of First Listed Defendant Santa Clara County, California  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	1	Incorporated or Principal Place of Business In This State	4	<input checked="" type="checkbox"/> 4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	440 Other Civil Rights		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting	<b>HABEAS CORPUS</b>	<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
220 Foreclosure	442 Employment	463 Alien Detainee	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations	510 Motions to Vacate Sentence	871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities—Employment	530 General		899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other	535 Death Penalty		950 Constitutionality of State Statutes
290 All Other Real Property	448 Education	<b>OTHER</b>		
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding    2 Removed from State Court    3 Remanded from Appellate Court    4 Reinstated or Reopened    5 Transferred from Another District (specify)    6 Multidistrict Litigation—Transfer    8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)  
 Brief description of cause:  
 Unjust Enrichment, Breach of Implied Warranty, Consumer Fraud

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.    DEMAND \$ 5,000,000.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes    No

**VIII. RELATED CASE(S), IF ANY** (See instructions):    JUDGE    DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**  
 (Place an "X" in One Box Only)    SAN FRANCISCO/OAKLAND     SAN JOSE    EUREKA-MCKINLEYVILLE

DATE 07/03/2019

SIGNATURE OF ATTORNEY OF RECORD



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.   
*Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.*
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint. Class Action.** Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: RockTape Athletic Tape Offers Few Benefits for Injury Relief, Improved Athletic Performance](#)

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