

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERNARD ORTIZ, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

IDEAVILLAGE PRODUCTS CORP.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Bernard Ortiz (“Plaintiff”), on behalf of himself and all others similarly situated, by his undersigned attorneys, makes the following allegations against Defendant IdeaVillage Products Corp. (“Defendant”), based upon the investigation of counsel, except as to the allegations pertaining specifically to Plaintiff that are based on personal knowledge.

I. DEFENDANT’S UNFAIR AND DECEPTIVE PRACTICES

1. Defendant develops, manufactures, markets, and sells Copper Fit brand “copper-infused” knee and elbow sleeves. Defendant claims these products help relieve aches and pains and speed muscle recovery time. In fact, Defendant’s copper-infused knee and elbow sleeves do not provide any additional benefits beyond those provided by ordinary, less expensive, non-copper-infused knee and elbow sleeves.

2. Prior to purchasing Defendant’s product, Plaintiff heard and/or saw Defendant’s representations that its copper-infused knee and elbow sleeves will help relieve aches and pains and speed muscle recovery time.

3. Defendant, in violation of New Jersey law, has maintained an unfair and deceptive practice whereby it has usurped good will and sales by unfair means at the expense of consumers such as Plaintiff and the Class members. In particular, Defendant has deceived its customers by (a) falsely advertising and representing the benefits of its copper-infused knee and elbow sleeves and at the same time (b) pocketing the income from the sales based on these misrepresentations.

4. Defendant's misrepresentations are not mere puffery, as consumers—especially Defendant's target audience of physically active persons seeking muscle recovery and pain relief—would consider the alleged benefits of Defendant's copper-infused knee and elbow sleeves in their purchase decisions.

5. Among other things, Defendant represents its copper-infused knee and elbow sleeves "Provide support for muscle stiffness, soreness, and pain," "Help to reduce recovery time of muscles," and "Support improved circulation and oxygenation of working muscles."

Knee & Elbow Sleeve

The Copper Fit compression Sleeve provides muscle and joint support to help you move more comfortably through your day. Available in Black, our Sleeve may also

- Provide support for muscle stiffness, soreness, and pain
- Help to reduce recovery time of muscles
- Support improved circulation and oxygenation of working muscles
- Prevent strain and fatigue by keeping muscles warm
- Wick sweat away from the body to prevent chafing and rashes
- Fabric is 82% Polyester and 14% Spandex and 4% Copper & other fibers

Compression garments are only effective when they are being worn and properly sized. For study references, see sections: Benefits of Copper and Benefits of Compression.

Knee & Elbow Sleeve Details

- Prevent strain and fatigue by keeping muscles warm

6. Defendant claims copper is an “essential nutrient for the human body” and that it “protect[s] against bacteria that can cause stains, odors and deterioration of the product.”

Benefits of Copper

For thousands of years people have appreciated copper's many natural properties. Ancient Egyptians, Romans, and Aztecs used copper for many purposes[1], and it is known to possess properties that protect against odors and other benefits.

- Copper's natural properties provide protection against bacteria that can cause stains, odors and deterioration of the product. Copper is more effective than stainless steel or silver containing coatings
- Essential nutrient for the human body
- Non-sensitizing, and non-irritating to the skin; not harmful to people or the environment

¹Gregor Grass, Christopher Rensing, and Marc Solioz, Metallic Copper as an Antimicrobial Surface, Applied Environmental Microbiology, 2011 March; 77(5): 1541-1547 and <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3067274/>

Copper Benefits

- Support improved circulation and oxygenation of working muscles

About Copper Fit™

Copper Fit compression products are manufactured with copper ions bound at the fiber level during the manufacturing process. Our copper fiber process will not easily wash out or quickly wear away, and has been tested to remain effective for numerous washes. More important, copper is environmentally friendly, a natural mineral, and is a required nutrient of many ecosystems present in nature.

About Copper Fit™

oxygenation of working muscles

FAQs

Is Copper Fit right for me?

Copper Fit copper-infused compression sleeves are designed for the average person to the accomplished athlete. Anyone seeking support for muscle soreness, aches and pains, or support for improved circulation and recovery time of muscles can use Copper Fit. They are comfortable and lightweight.

How quickly will I feel the benefits of wearing Copper Fit compression sleeves?

Everyone is different and just like all injuries, soreness, and aches and pains vary in degree. How much time it takes to feel a benefit in wearing a Copper Fit compression sleeve can range from almost immediately to a gradual improvement over an extended period of time. Remember, compression sleeves are only beneficial when they are worn and when properly sized. Copper Fit compression sleeves offer the highest quality copper-infusion and comfort fit to allow for extended wear.

When should I wear a Copper Fit compression sleeve?

Copper Fit compression sleeves can be worn anytime. The Knee Sleeve may be helpful when you are working out, running, walking, or standing for extended periods. The Elbow sleeve may be helpful when you are using your arms for lifting or repetitive movements. Wearing a compression sleeve when you're most active may help stabilize and support muscles and promote circulation. But Copper Fit can be worn when inactive, too, as compression sleeves help keep your muscles warm and may help provide support for pain and soreness. Remember, compression products are only beneficial when they are being worn – and you can wear Copper Fit anytime, anywhere.

What is Copper Fit?

Copper Fit is a copper-infused compression garment designed to help stabilize and support muscles, provide support for pain, stiffness, and soreness, as well as aid in recovery and performance by supporting improved circulation and oxygenation. Copper Fit is:

- 82% Polyester and 14% Spandex Jersey and 4% Copper Ion Fiber with high-wicking modacrylic fiber composition
- The natural properties of copper help protect the garment from bacteria which cause odors and stains
- Anti-static and Anti-pilling

*Same style. Just pay less. **FAQs**

7. Defendant's representations regarding copper's alleged benefits imply its copper-infused knee and elbow sleeves provide benefits including pain relief and muscle recovery beyond that of ordinary, less expensive, non-copper-infused knee and elbow sleeves. Defendant plainly seeks to induce consumers to pay a premium price for its products based on these alleged benefits.

8. Defendant's television commercials likewise tout the alleged benefits of its copper-infused knee and elbow sleeves. For example, in a commercial titled "Copper Fit – Relieve Joint Pain," Defendant states, "The Copper Fit high performance compression fabric is blended with therapeutic copper, essential to your body. Two technologies combined to help provide support for muscle soreness and aid in recovery and performance. Faster recovery and

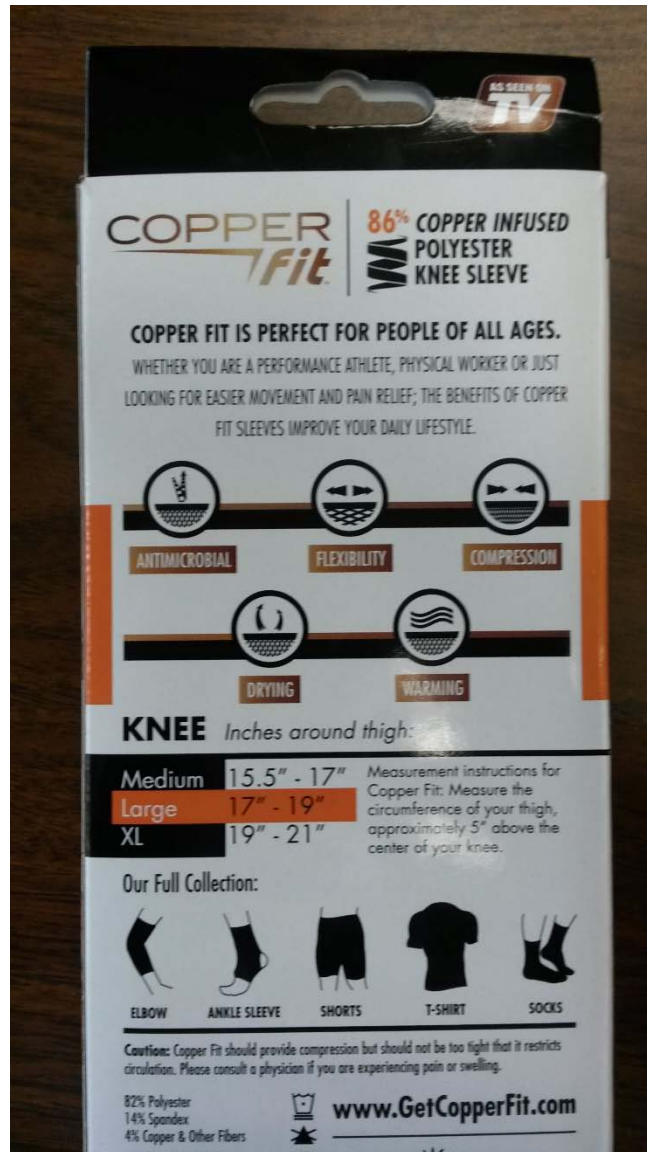
guaranteed relief of muscle aches and pains. . . . Feel the relieving power of copper compression. Feel the power of Copper Fit.”¹

9. In another commercial starring former NFL quarterback Brett Favre, Defendant states, “Copper Fit: Advanced compression garments to help relieve muscle and joint soreness. . . . Therapeutic fabric, blended with copper, to aid in faster recovery and performance. And guaranteed relief of muscle aches and pains. . . . Feel the relieving power of copper compression. Feel the power of Copper Fit.”²

10. Defendant also states on its packaging that among other things its products provide “pain relief.”

¹ <https://www.youtube.com/watch?v=F5Zf9H6qqPM>

² <https://www.youtube.com/watch?v=OESRZ6OnMok>



11. Based on information and belief, Defendant knew its representations regarding its products' benefits were false and misleading. Specifically, Defendant knew or should have known its copper-infused knee and elbow sleeves do not provide any benefits beyond those provided by ordinary, less expensive, non-copper-infused knee and elbow sleeves.

12. On the other hand, Plaintiff did not know and had no reason to know Defendant was falsely marketing and selling its products. Had Plaintiff known Defendant was falsely marketing and selling its products he would not have purchased them.

13. Plaintiff brings this suit as a class action on behalf of all similarly-situated purchasers of Defendant's Copper Fit brand knee and elbow sleeves in order to recover the proceeds Defendant unlawfully obtained through its unfair and deceptive business practices, and for injunctive relief.

II. THE TRUTH REGARDING THE ALLEGED BENEFITS OF COPPER-INFUSED KNEE AND ELBOW SLEEVES

14. Copper is an essential trace element required for human life. A person's diet will typically provide enough copper to satisfy the daily recommendation. Indeed, a copper deficiency is a rare diagnosis as other non-dietary sources expose a person to copper, including cookware, medications, drinking water and pesticides.

15. Copper is typically absorbed through the stomach and thereafter transported to the liver. It is then excreted through the liver and biliary tract to other tissues in the body.

16. Copper in its simplest form, an inorganic salt, cannot permeate the skin.³ Scientific studies show that only when copper is combined a peptide is its permeability improved. And, even once it is combined with a peptide, it needs constant administration for typically more than twenty-four hours.⁴

³ *Gaetke LM and Chow CK. Copper toxicity, oxidative stress, and antioxidant nutrients. Toxicology 189: 147-163, 2003.*

⁴ *Hostynek JJ, Dreher F, and Maibach HI. Human stratum corneum penetration by copper: in vivo study after occlusive and semi-occlusive application of the metal as powder. Food and chemical toxicology : an international journal published for the British Industrial Biological Research Association 44: 1539-1543, 2006; *Gorter RW, Butorac M, and Cobian EP. Examination of the cutaneous absorption of copper after the use of copper-containing ointments. American journal of therapeutics 11: 453-458, 2004.**

17. The copper levels in a person's body remain stable or elevated when he or she is physically active.⁵ Copper levels do not decrease as a result of strenuous exercise. One study showed that the serum copper was unaffected by acute exercise.⁶

18. There is no scientific evidence Defendant's copper-infused knee and elbow sleeves provide any benefits—muscle recovery, pain relief, or otherwise—beyond those provided by ordinary, less expensive, non-copper-infused knee and elbow sleeves.

III. DEFENDANT FAILED TO COMPLY WITH APPLICABLE REGULATIONS

19. Defendant claims the copper in its knee and elbow sleeves “protect[s] against bacteria that can cause stains, odors and deterioration of the product.”

20. Defendant failed to meet the United States Food and Drug Administration's (“FDA”) and Environmental Protection Agency (“EPA”) requirements regulating antimicrobial textiles and certain copper. Nowhere on Defendant's products are there any disclosures of FDA or EPA registrations or approval.

21. Defendant has failed to take corrective measures in order to have its products comply with these requirements. As such, its statements misled and still mislead Plaintiff and the Class members. Specifically, either its products contain no antimicrobial agents *or* its products have not satisfied the applicable regulations. A consumer has a right to know and consider either of these scenarios. In any event, Plaintiff and the Class members have purchased products that likely do not meet the proper regulatory requirements.

⁵ *Campbell WW and Anderson RA. Effects of aerobic exercise and training on the trace minerals chromium, zinc and copper. Sports medicine 4: 9-18, 1987; Lukaski HC. Effects of exercise training on human copper and zinc nutriture. Advances in experimental medicine and biology 258: 163-170, 1989.*

⁶ *Anderson RA, Polansky MM, and Bryden NA. Acute effects on chromium, copper, zinc, and selected clinical variables in urine and serum of male runners. Biological trace element research 6: 327-336, 1984.*

IV. JURISDICTION AND VENUE

22. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005). With respect to CAFA: (a) the amount in controversy exceeds the jurisdictional amount of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2); (b) the Class consists of thousands, and perhaps up to millions, of injured parties, and (c) some members of the Class, including Plaintiff, are citizens of States other than that of Defendant.

23. Venue in this judicial District is proper under 28 U.S.C. § 1391(b)(1) and (2), as a substantial part of the events or omissions giving rise to the claims occurred within this District and Defendant's business headquarters are located in this District.

V. PARTIES

24. Plaintiff Bernard Ortiz is a resident of the State of Iowa. Plaintiff purchased two Copper Fit brand knee sleeves manufactured, marketed and/or sold by Defendant in approximately January 2015. Plaintiff purchased the knee sleeves at Walgreens after seeing Defendant's television commercials representing its products would, among other things, relieve Plaintiff's knee pain. Plaintiff was deceived by Defendant's misrepresentations, including its commercials, regarding the alleged benefits of its copper-infused products. Plaintiff did not receive the benefit of the bargain and/or suffered out-of-pocket loss as a result of Defendant's misrepresentations and was damaged.

25. Defendant IdeaVillage Products Corp. is a New Jersey corporation with its principal place of business in Wayne, New Jersey. Defendant develops, manufactures, markets, and sells Copper Fit brand copper-infused knee and elbow sleeves to consumers including Plaintiff and the Class members.

VI. CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. This action satisfies the procedural requirements by Rule 23(b)(3).

27. This suit is a class action brought on behalf of a Class defined as follows:

All persons who paid, in whole or in part, for any Copper Fit brand knee or elbow sleeve manufactured, marketed, and/or sold by IdeaVillage Products Corp. for personal, family, or household uses.

Excluded from the Class is Defendant, any entity in which Defendant has a controlling interest, Defendant's legal representatives, predecessors, successors, assigns, and employees, and any persons who purchased Defendant's products from www.getcopperfit.com.

28. Alternatively to the nationwide Class claims, Plaintiff brings this action on behalf of a State of Iowa Class as defined as:

All persons in the State of Iowa who paid, in whole or in part, for any Copper Fit brand knee or elbow sleeve manufactured, marketed, and/or sold by IdeaVillage Products Corp. for personal, family, or household uses.

29. The classes described in this Complaint will be jointly referred to as "Class."

30. Plaintiff reserves the right to amend or alter the Class.

Numerosity

31. Based upon information and belief, the Class members are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

Commonality and Predominance

32. The claims of Plaintiff and the Class members are based upon common questions of law and fact. Plaintiff and the Class members are also entitled to a common form of relief, namely money damages.

33. The questions of law and fact common to the Class include but are not limited to:

a. Whether this Court has personal jurisdiction over IdeaVillage Products Corp.;

b. Whether Defendant's conduct as set forth herein constitutes the act, use or employment of an unconscionable commercial practice, deceptive, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in violation of the New Jersey Consumer Fraud Act;

c. Whether New Jersey law applies to the proposed nationwide Class;

d. Whether Defendant violated consumer protection statutes and/or false advertising statutes and/or state deceptive business practices statutes;

e. Whether Defendant violated the common law of negligent misrepresentation and/or unjust enrichment; and

f. The nature and extent of damages and other remedies to which the conduct of Defendant entitles the Class members.

Typicality

34. Plaintiff's claims are typical claims of the Class members and the named Plaintiff is a member of the Class described herein. Specifically, Plaintiff and all the Class members sustained damages arising out of Defendant's wrongful course of conduct. The harms suffered by Plaintiff are typical harms suffered by the Class members and Plaintiff and the other Class members have an interest in preventing Defendant from engaging in such conduct in the future.

Adequacy of Representation

35. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all obligations and duties material thereto. Plaintiff will fairly and adequately protect the interest of the Class and has no interests adverse to or which directly conflict with the interests of the other members of the proposed Class.

36. The interests of the named Plaintiff are co-extensive with, and not antagonistic to, those of the absent Class members. The named Plaintiff will undertake to represent and protect the interests of absent Class members.

37. The named Plaintiff has engaged the services of the undersigned counsel. These counsel are experienced in complex class action litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise represent, the named Plaintiff and absent Class members.

38. The Class members can be notified of the class action through publication and direct mailings to address lists maintained in the usual course of business by Defendant and retail stores.

39. The questions of law and fact common to the Class as summarized above predominate over any questions affecting only individual Class members. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the Class members and, as such, each of the above common questions of law and fact support class certification here.

40. The injuries sustained by Plaintiff and the Class members flow, in each instance, from a common nucleus of operative facts—Defendant’s misconduct. In each case, Defendant marketed and sold its copper-infused knee and elbow sleeves and misled and deceived Plaintiff and the Class members concerning the recovery and pain-relieving benefits of these products.

41. Plaintiff and the Class members have been damaged by Defendant’s misconduct. Plaintiff and the Class members paid a premium price for Defendant’s copper-infused knee and elbow sleeves, which products Plaintiff would not have purchased absent Defendant’s misrepresentations.

Superiority

42. The class action device is superior to other available means for the fair and efficient adjudication of the claims belonging to Plaintiff and the Class members. The relief

sought for each individual Class member is small given the burden and expense of individual prosecution of the potentially extensive litigation necessitated by the conduct of Defendant. Furthermore, it would be virtually impossible for the Class members to seek redress on an individual basis. Even if the Class members themselves could afford such individual litigation, the court system could not.

43. Individual litigation of the legal and factual issues raised by Defendant's conduct would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive supervision by a single court. Given the similar nature of the Class members' claims and the absence of material differences in the state statutes and common laws upon which the Class members' claims are based, a nationwide or specific Statewide Classes will be easily managed by the Court and the parties.

CAUSES OF ACTION

COUNT I - VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

44. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

45. Plaintiff and the Class members are consumers.

46. Defendant's copper-infused knee and elbow sleeves are consumer-oriented and are marketed to consumers.

47. At all relevant times, the New Jersey Consumer Fraud Act ("CFA") has prohibited consumer fraud in connection with the sale or advertisement of merchandise:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in

connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; provided, however, that nothing herein contained shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design or purpose of the advertiser.

See C.F.A. § 56:8-2.

48. Pursuant to the CFA, Defendant had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, promotion, and sale of its copper-infused knee and elbow sleeves to Plaintiffs and the Class members.

49. Defendant intended that Plaintiffs and the Class members rely on its materially deceptive practices and purchase its products as a consequence of the deceptive practices.

50. Defendant's deceptive representations and material omissions to Plaintiffs and the Class members constitute unfair and deceptive acts and practices under the CFA.

51. Defendant engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiffs and the Class members.

52. Plaintiffs and the Class members were actually deceived by Defendant's misrepresentations.

53. As a proximate result of Defendant's misrepresentations, Plaintiffs and the Class members have suffered ascertainable losses, in an amount to be determined at trial.

54. At all relevant times hereto Defendant was engaged in interstate trade or commerce in the State of New Jersey.

COUNT II - BREACH OF EXPRESS WARRANTIES

55. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

56. Defendant is in the business of selling its copper-infused knee and elbow sleeves to consumers including Plaintiff and the Class members.

57. Defendant expressly warranted its copper-infused knee and elbow sleeves:

- a. Provide support for muscle stiffness, soreness, and pain;
- b. Help to reduce recovery time of muscles;
- c. Support improved circulation and oxygenation of working muscles; and
- d. Provide guaranteed relief of muscle aches and pains.

58. Defendant's products do not conform to these express representations. Thus, Defendant breached its express warranties.

59. As a direct and proximate result of the breach of said warranties, Plaintiff and the Class members suffered and/or will continue to be harmed and suffer economic loss.

60. Plaintiff and the Class members did rely on the express warranties of the Defendant herein.

61. These statements of express warranties were part of the basis of the bargain in the Plaintiff and the Class purchasing the products.

62. Defendant knew or should have known that, in fact, said representations and warranties were false, misleading, and untrue.

63. Defendant's conduct breached their express warranties in violation of, among other state express warranty laws, N.J. Stat. Ann. § 12A:2-313.

64. The above statute does not require privity of contract to recover for breach of express warranty.

65. As a direct and proximate result of the foregoing acts and/or omissions, Plaintiff and the Class members have suffered damages entitling them to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

COUNT III - NEGLIGENT MISREPRESENTATION

66. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

67. Defendant had a duty to disclose to Plaintiff and the Class members the actual quality and characteristics of its copper-infused knee and elbow sleeves.

68. Defendant negligently and/or carelessly misrepresented, omitted, and concealed from consumers material facts relating to the quality and characteristics of its products including their alleged benefits. Defendant made such false and misleading statements and omissions on its website and in its advertisements and packaging with the intention of inducing Plaintiff and the Class members to purchase its products.

69. Defendant was careless in ascertaining the truth of its representations in that it knew or should have known the represented benefits would not be realized by Plaintiff and the Class members.

70. Plaintiff and the Class members were unaware of the falsity of Defendant's misrepresentations and as a result justifiably relied thereon in deciding to purchase the products. Had Plaintiff and the Class members been aware of the true nature of the products, they would not have purchased them at the premium price offered by Defendant.

COUNT IV - UNJUST ENRICHMENT

71. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

72. At all relevant times, Defendant designed, manufactured, produced, marketed and/or sold the copper-infused knee and elbow sleeves.

73. Defendant benefitted from its unlawful acts by receiving payments for the sales of the products. Defendant knew its products did not offer all the benefits it advertised in order to entice consumers to purchase its products.

74. Plaintiff and the Class members conferred non-gratuitous benefits upon Defendant by paying for the products.

75. Defendant appreciated or had knowledge of the non-gratuitous benefits conferred upon them by Plaintiff and the Class members.

76. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Class members with full knowledge that, as a result of Defendant's wrongdoing, Plaintiff and the Class members were not receiving products of the high quality, nature, fitness, or value they expected. Allowing Defendant to retain the non-gratuitous benefits Plaintiff and the Class members conferred would be unjust and inequitable under these circumstances.

77. Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiff and the Class members would be unjust and inequitable, Plaintiff and the Class members 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 V - DECLARATORY RELIEF PURSUANT TO 28 U.S.C. 2201 et seq.

78. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

79. As set forth above, Plaintiff contends that Defendant engaged in unfair and deceptive business activities, whereas Defendant maintains its conduct has been proper.

80. As such, an actual controversy exists between Plaintiff and the Class members and Defendant concerning the parties' rights and duties with respect to Defendant's business practices concerning its copper-infused knee and elbow sleeves.

COUNT VI - VIOLATION OF THE PRIVATE RIGHT OF ACTION FOR CONSUMER FRAUDS ACT, IOWA CODE CHAPTER 714H

81. Plaintiff repeats and realleges, as if fully set forth herein at length, each and every allegation contained in the above paragraphs and further alleges:

82. Defendant has engaged in unfair, deceptive, untrue and misleading business practices in violation of Iowa law.

83. Defendant has violated this statutory prohibition against engaging in unlawful acts and practices by, *inter alia*, making misrepresentations and omissions of material facts with the "intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission" in connection with the sale of its products. Iowa Code Ann. § 714H.3.

84. Pursuant to Iowa law, Defendant had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, promotion, and sale of its copper-infused knee and elbow sleeves to Plaintiff and the Class members.

85. In connection with the sale of its consumer merchandise, Defendant engaged in unfair and deceptive acts and practices including, without limitation:

- a. Unfairly and deceptively misrepresenting the benefits of its copper-infused knee and elbow sleeves to its customers;
- b. Unfairly and deceptively advertising that its products will provide guaranteed relief of muscle aches and pains;
- c. Unfairly and deceptively advertising that its products will help to reduce recovery time of muscles;

d. Unfairly and deceptively selling products that failed to perform and/or conform to Defendant's representations and/or descriptions thereof.

86. As a result of Defendant's unfair and deceptive conduct, Plaintiff sustained damages including but not limited to the damages detailed above.

87. Defendant intended that Plaintiff and the Class members rely on its materially deceptive advertisements and misrepresentations and purchase its products as a consequence of the deceptive practices.

88. Defendant's deceptive representations and material omissions regarding its products constitute unfair and deceptive acts and practices under Iowa Law.

89. Defendant engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiff and the Class members.

90. Plaintiff and the Class members were actually deceived by Defendant's misrepresentations.

91. As a proximate result of Defendant's misrepresentations, Plaintiff and the Class members have suffered ascertainable losses, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class members request that the Court enter an order or judgment against Defendant including the following:

a. Certification of the action as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure; appointment of Plaintiff as the Class Representative and appointment of his counsel as Class Counsel;

b. Damages in the amount of monies paid for the Copper Fit brand knee and elbow sleeves;

- c. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
- d. Restitution to Plaintiff and the Class members and disgorgement of Defendant's ill-gotten gains;
- e. Pre-judgment and post-judgment interest on such monetary relief;
- f. Other appropriate injunctive relief;
- g. The costs of bringing this suit, including reasonable attorneys' fees; and
- h. All other relief to which Plaintiff and the Class members may be entitled at law or in equity.

JURY DEMAND

Plaintiff hereby demands trial by jury on his own behalf and on behalf of the absent Class members on all issues and claims presented above.

Dated: May 15, 2015

Respectfully Submitted,

By: **/s/ Benjamin D. Elga**
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CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BERNARD ORTIZ, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Polk County, Iowa (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

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DEFENDANTS

IDEAVILLAGE PRODUCTS CORP.

County of Residence of First Listed Defendant Passaic County (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (This State, Another State, Foreign Country).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 6 Multidistrict Litigation

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. Brief description of cause: False advertising and breach of warranty for health benefits of compression sleeve

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/15/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Benjamin D. Elga

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 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.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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 Rule 23, F.R.Cv.P.
- 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.