

**IN THE UNITED STATES COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WILLIAM LUCERO, RHONDA BOGGS,  
JEROME JEFFY, and SANDY KONTURA,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

TOMMIE COPPER INC., TOMMIE COPPER  
HOLDINGS, INC., THOMAS KALLISH and  
MONTEL WILLIAMS,

Defendants.

Civ. Action No. 15-6055

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs William Lucero, Rhonda Boggs, Jerome Jeffy, and Sandy Kontura (collectively the “Plaintiffs”), on behalf of themselves and all others similarly situated, hereby allege against Defendants Tommie Copper, Inc., Tommie Copper Holdings, Inc., Thomas Kallish, and Montel Williams (collectively, “Defendants”) the following upon their own knowledge, or where they lack personal knowledge, upon information and belief including the investigation of their counsels.

**NATURE OF THE ACTION**

1. This is a class action against Defendants arising out of their sale and marketing of Tommie Copper athletic compression apparel and accessories, each of which incorporate a proprietary “copper-infused” and/or “copper and zinc-infused” fabric (collectively, the “Tommie Copper Products” or “Products”).<sup>1</sup>

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<sup>1</sup> The Tommie Copper Products include, but are not limited to, Defendants’ Crew Compression Socks, Calf Compression Socks, Men’s Long Sleeve Compression Shirts, Women’s Long Sleeve Compression Shirts, Women’s Compression Tights, Wrist Compression

2. According to Defendants, “the benefits of copper have been extolled for centuries” and “[c]opper is well known for its anti-inflammatory properties, and inflammation is one of the major causes of pain.”<sup>2</sup> Capitalizing on this falsehood and the implication that Tommie Copper Products are based on scientific principles, Defendants through an extensive, widespread, comprehensive, and uniform nationwide marketing campaign, commenced marketing Tommie Copper Products as a “revolutionary breakthrough” treatment for pain relief.

3. Specifically, Defendants claim that: “Copper stimulates the immune system to fight infections, repair injured tissues, and promote healing.”<sup>3</sup> Defendants further claim that “[c]opper also helps to neutralize ‘free-radicals’ which can cause severe damage to cells.”<sup>4</sup> As a result, Defendants represent that Tommie Copper Products (which all incorporate a proprietary copper infused thread) will purportedly, among other benefits: relieve pain, including arthritis and other chronic joint and muscular pain; aid in injury management; accelerate or speed recovery; and improve muscular power, strength, and endurance.

4. Defendants even represent that Tommie Copper Products will provide “life changing relief,” reducing pain and inflammation associated with debilitating medical conditions such as arthritis, fibromyalgia, lupus, multiple sclerosis and/or other serious ailments or injuries.

5. For example, one infomercial campaign prominently features an arthritis sufferer

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Sleeves, Ankle Compression Sleeves, Calf Compression Sleeve, Elbow Compression Sleeve, Knee Compression Sleeve, Men’s Compression Under-Shorts, Women’s Compression Shorts, Men’s Compression Shirts, Women’s Compression Shirts, Half Finger Compression Gloves, and Full Finger Compression Gloves.

<sup>2</sup> <http://www.ispot.tv/ad/7I5j/tommie-copper-compression-sleeve-featuring-montel-williams> (last visited July 31, 2015).

<sup>3</sup> <http://web.archive.org/web/20111005153718/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

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

who extolls the purported miraculous healing powers of Tommie Copper:

I had grade 4 bone on bone arthritis in both my knees. I wound up no longer be able to walk a golf course because I couldn't deal with the swelling that would occur. I got the Tommie Copper compression sleeve, put it on, immediately noticed it was not the torture it had been....<sup>5</sup> The Tendonitis in my arm was the result of golf. I had to quit. I had to stop. I got the sleeve, I got the knee band and my life has changed . . . [I hit] 600 golf balls in the last 3 days, [and] that's because I can, because of the Tommie Copper. – Ed Garrett<sup>6</sup>

6. Another infomercial features World Champion Bronco rider Shawn Minor, who purportedly claims Tommie Copper Products helped him obtain relief, including “full rotation” and “mobility” after sustaining numerous job-related injuries, including:

- nine broken bones (in his foot),
- a broken ankle,
- broken toes,
- broken fingers,
- a broken sternum (which was broken “in half” after a bull stepped on him),
- broken legs,
- a “knee pop out,”
- “cracked vertebrae in [his] neck,”
- a broken collar bone, and
- a dislocated a shoulder.

7. According to Mr. Minor, “[m]y recovery time with wearing Tommie Copper is next to none. Since I’ve been using Tommie Copper, it’s made me feel 10 years younger.”<sup>7</sup>

8. To bolster these claims, Defendants enlisted Montel Williams, a well-known public media personality and celebrity endorser, who claims Tommie Copper Products helped

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<sup>5</sup> [https://archive.org/details/WETA\\_20131012\\_223000\\_Washington\\_Week\\_With\\_Gwen\\_Ifill#start/900/end/960](https://archive.org/details/WETA_20131012_223000_Washington_Week_With_Gwen_Ifill#start/900/end/960).

<sup>6</sup> [https://archive.org/details/WETA\\_20131012\\_223000\\_Washington\\_Week\\_With\\_Gwen\\_Ifill#start/960/end/1020](https://archive.org/details/WETA_20131012_223000_Washington_Week_With_Gwen_Ifill#start/960/end/1020).

<sup>7</sup> [http://www.commercialsihate.com/tommie-copper-fake-cowboy-and-his-chewin-tobacco\\_topic16836.html](http://www.commercialsihate.com/tommie-copper-fake-cowboy-and-his-chewin-tobacco_topic16836.html) (last visited July 31, 2015).

him cope with multiple sclerosis (“MS”), an autoimmune disorder in which insulating covers of nerve cells in the brain and spinal cord are damaged.

9. Defendant and Chief Executive Officer (“CEO”) Thomas Kallish, even credits the Products for saving his life:

I had broken half of my body. I couldn’t live in the pain I was in. If I didn’t have that sleeve I couldn’t sleep at night. When I tell people that this product works I’m not telling you because I want you to buy one, I am telling you because it basically saved my life.<sup>8</sup>

10. Not surprising, Defendants’ marketing campaign has been highly effective and lucrative (and to the detriment of the proposed class). When Defendants first launched Tommie Copper Products in 2010, annual sales reached \$25 million in its first year. By 2013, Defendants publicly reported that sales were on target to do approximately \$60-65 million.

11. Defendants’ representations and claims, however, are false and misleading. Contrary to Defendants’ claims, Tommie Copper Products do not aid in relieving pain, let alone chronic and debilitating pain such as arthritis or MS. Nor does it: neutralize “free-radicals”; stimulate the immune system to fight infections; repair injured tissues; and/or promote healing. In fact, clinical tests have found no meaningful therapeutic effect for copper concerning pain, inflammation, physical functioning, and stiffness beyond those of a placebo for patients with pain symptoms.

12. Defendants’ hoax involves numerous false and misleading statements concerning its Products that have injured Plaintiff and the Class (defined herein) by inducing them to purchase a worthless and/or overpriced product. Tommie Copper does so with one goal in mind - to reap enormous profits at the expense of unsuspecting consumers. Tommie Copper, however, should be held accountable and liable for its deceptive conduct in the marketing and

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<sup>8</sup> <https://www.youtube.com/watch?v=KliqEk4xn7M> (last visited July 9, 2015).

sale of Tommie Copper Products.

13. Defendants knew or should have been aware of the misleading nature in the representations regarding the efficacy of copper-infused compression fabric on pain relief, accelerations in recovery, and improvements in muscular power, strength, endurance, and injury management.

14. Had Plaintiffs and Class Members known Tommie Copper Products do not provide pain relief, accelerate recovery, or improve muscular power, strength, endurance, and injury management, they would not have purchased or would not have paid as much for Tommie Copper Products.

15. Plaintiffs assert claims on their own behalf and on behalf of a Nationwide Class, and on behalf of subclasses under California, New York, Georgia, and Ohio for: negligent misrepresentation; unjust enrichment; violation of the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; New York's Breach of Express Warranty, N.Y. U.C.C. § 2-313; New York's Breach of Implied Warranty of Merchantability, N.Y. U.C.C. § 2-314; New York's Unfair and Deceptive Practices Law, N.Y. Gen. Bus. Law § 349; New York's False Advertising Law, N.Y. Gen. Bus. Law § 350; California's Breach of Express Warranty, Cal. Com. Code §2313; California's Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314; California's Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*; California's Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*; California's False Advertising Law, Bus. & Prof. Code §§ 17200, *et seq.*; Georgia's Breach of Express Warranty, Ga. Code Ann. § 11-2-313; Georgia's Breach of Implied Warranty of Merchantability, Ga. Code Ann. § 11-2-314; Georgia's Fair Business Practices Act, Ga. Code Ann. § 10-1-393; Ohio's Breach of Express Warranty, O.R.C. § 1302-26; Ohio's Breach of Implied Warranty of Merchantability, O.R.C. § 1302-26; and the Ohio Consumer Sales Practices Act, Rev. Code Ann. §§ 1345, *et*

*seq.*

### **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

17. This Court also has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), as amended by the Class Action Fairness Act of 2005 because (a) the matter in controversy, exclusive of interest and costs, exceeds the sum of \$5,000,000, and (b) is a class action in which Plaintiffs and two-thirds of the proposed Class Members are from a different state than Defendant.

18. Personal jurisdiction is derived from the fact that Defendants systematically and continuously conduct business within the state of New York, Tommie Copper maintains a principal place of business within the state of New York, and many of the false and misleading statements at issue in this case emanated from New York.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because Defendants' principal place of business is located within this judicial district.

### **PARTIES**

20. Plaintiff William Lucero is a resident of the State of California.

21. Plaintiff Rhonda Boggs is a resident of the State of Georgia.

22. Plaintiff Jerome Jeffy is a resident of the State of New York.

23. Plaintiff Sandy Kontura is a resident of the State of Ohio.

24. Defendant Tommie Copper, Inc. is a Delaware corporation and maintains a principal place of business in Westchester County. Founded in 2010 by Defendant Thomas Kallish, Tommie Copper Inc. manufactures and sells a line of copper-infused products

purportedly designed as “natural solution” to address pain relief, repair tissue or accelerate recovery, neutralize “free-radicals”, and improve muscular power, strength, endurance, and injury management.<sup>9</sup> Tommie Copper describes itself as “representing the next evolution of performance and recovery apparel.”<sup>10</sup> Since its inception, Tommie Copper Inc. has developed a significant e-commerce consumer base.<sup>11</sup> Tommie Copper markets its products through various advertising methods, including direct response television commercials and infomercials, television shows, and online advertising that include an active social media presence.

25. Defendant Tommie Copper Holdings, Inc. is the parent company of Defendant Tommie Copper, Inc.

26. Collectively, Defendants Tommie Copper, Inc. and Tommie Copper Holdings, Inc. are referred to herein as Tommie Copper.

27. Defendant Thomas Kallish (“Kallish”) is the founder and chairman of Tommie Copper. A Westchester native, Kallish “took to wearing compression sleeves for relief”<sup>12</sup> after his diagnosis with arthritis that stems from “many years of wear and tear on his joints and muscles from competitive water skiing,”<sup>13</sup> and “a traumatic water skiing accident requiring

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<sup>9</sup> *Tales of Business Expansion in Westchester*, Westchester Economic Development Guide, Annual 2014, <http://web.archive.org/web/20150506181043/http://www.westchestermagazine.com/Westchester-Economic-Development-Guide/Annual-2014/Tales-of-Business-Expansion-in-Westchester/> (accessed by searching for <http://www.westchestermagazine.com/Westchester-Economic-Development-Guide/Annual-2014/Tales-of-Business-Expansion-in-Westchester/> in the Internet Archive index).

<sup>10</sup> <http://www.prweb.com/releases/2014/11/prweb12290190.htm> (last viewed July 31, 2015).

<sup>11</sup> <http://globenewswire.com/news-release/2014/07/14/650595/10089235/en/Tommie-Copper-Announces-Strategic-Investment-From-Tengram-Capital-Partners.html> (last visited July 31, 2015).

<sup>12</sup> <http://web.archive.org/web/20110820043922/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

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

multiple surgeries[.]”<sup>14</sup> Dissatisfied with the available compression wear available in the market, Kallish “set about creating a thinner, gentler compression garment for 24 hour wear and combined it with the anti-inflammatory properties of copper[.]”<sup>15</sup> Kallish personally made and appeared in many of the false and misleading representations set forth herein, including web, print, and television advertisements, and marketing materials directed at consumers nationwide and specifically in this District.

28. Defendant Montel Williams (“Montel”) is a well-known Emmy Award® winning television personality, radio talk show host, inspirational speaker, spokesman, and actor. Montel was diagnosed with multiple sclerosis in 1999.<sup>16</sup> According to Defendant Kallish, Montel contacted Tommie Copper after receiving a product from a friend and was “ecstatic about the relief he found from his painful [m]ultiple [s]clerosis.”<sup>17</sup> Montel thereafter became a “paid spokesperson”<sup>18</sup> for Tommie Copper, touting the benefits of Tommie Copper Products on his own talk show (The Montel Williams Show), Tommie Copper TV show, an episode of The Dr. Oz Show, numerous infomercials, in various interviews, and in various social media posts. Montel personally made and appeared in many of the false and misleading representations set forth herein, including web, print, and television advertisements or

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<sup>14</sup> <http://web.archive.org/web/20130709211756/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

<sup>15</sup> <http://web.archive.org/web/20120530040324/http://www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper> (accessed by searching for [www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper](http://www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper) in the Internet Archive index).

<sup>16</sup> <http://edition.cnn.com/SHOWBIZ/TV/9908/23/montel.williams/> (last visited July 31, 2015).

<sup>17</sup> <http://web.archive.org/web/20120530040324/http://www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper> (accessed by searching for <http://www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper> in the Internet Archive index).

<sup>18</sup> <http://www.doctoroz.com/episode/has-montel-williams-discovered-fountain-youth> (last visited July 31, 2015).



infomercials and marketing materials directed at consumers nationwide and specifically in this District. Defendant Montel also filmed advertisements and/or the Tommie Copper Television show and appeared at various Tommie Copper promotion events in New York to promote the Products.

29. Collectively, Defendants Tommie Copper, Kallish and Montel are referred to herein as the “Defendants.”

30. At all relevant times, each of the Defendants were engaged in the design, manufacture, production, testing, study, inspection, labeling, marketing, advertising, sale, promotion and/or distribution of Tommie Copper products.

31. At all relevant times, each Defendant acted in concert with, with the knowledge and approval of and/or as the agent of the other defendants within the course and scope of the agency, regarding the acts and omissions alleged.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

#### **Consumers’ Desire for Benign Pain and Inflammation Treatment**

32. Pain of any type is a major symptom in many medical conditions and the most frequent reason for physical consultation in the United States. Many forms of joint pain involve inflammation – sometimes it is local and other times it can be systemic. With joints, pain can come from overuse, or injury.

33. Arthritis is a leading cause of pain and disability worldwide. Moreover, arthritis is the leading cause of disability among Americans. It is estimated 52.5 million U.S. adults (about 1 of 5) report having doctor-diagnosed arthritis. As the U.S. population ages, the number of adults with arthritis is expected to increase sharply to 67 million by 2030.

34. Arthritis includes more than 100 different rheumatic diseases and conditions. There are different types of arthritis and related conditions: degenerative arthritis, inflammatory

arthritis, infectious arthritis, and metabolic arthritis. Common symptoms include swelling, pain, stiffness and decreased range of motion. These symptoms may come and go, and range from mild, moderate to severe. The most common form of arthritis is osteoarthritis - the wearing down of cartilage and bones. This type of arthritis can be traced to a breakdown in joint cartilage, and it is linked with inflammation. Hips, knees, spine, hands, and feet are most commonly affected.

35. Other forms of arthritis that occur often are rheumatoid arthritis, lupus, fibromyalgia, and gout. Symptoms include pain, aching, stiffness, and swelling in or around the joints. Some forms of arthritis, such as rheumatoid arthritis and lupus, can affect multiple organs and cause widespread symptoms. Rheumatoid arthritis is a known autoimmune disease which causes inflammation in the soft tissue or membrane in the joint or synovium.

36. Not surprisingly, pain can significantly interfere with a person's quality of life and general functioning. Arthritis is the nation's most common cause of disability. It limits the activities of 22.7 million Americans—for example, preventing them from being able to climb stairs or walk more than short distances.

37. Research has shown that people with arthritis are less likely to be physically active. Some people believe that being active will cause pain, make their symptoms worse, or damage their joints. Others do not know how to exercise safely. Nearly 44 percent of adults with arthritis report no leisure-time physical activity (compared with about 36 percent of those without arthritis). Not being physically active is a risk factor for other chronic diseases (*e.g.*, heart disease, diabetes, obesity) and makes it harder to manage these conditions.

38. Despite the magnitude of the problem, primary treatment options for arthritis

have not changed much in recent years.<sup>19</sup> Rather, the pain market is currently dominated by opioid analgesics. According to research from Frost & Sullivan, opioid analgesics earned revenues of \$50.2 billion in 2013 and are estimated this to reach \$60 billion in 2018.<sup>20</sup> Opioid analgesics, however, have well-known side effects such as addiction and constipation. As such, there exists tremendous demand for benign pain therapy treatments that excludes these undesirable side effects.

39. Moreover, as arthritis is more common among adults aged 65 years or older, this growth trend is expected to see a dramatic rise with an aging population as the baby boomer generation, which accounts for about 30% of the U.S. population, grows older.

40. Capitalizing on this demand and the desperation for non-addictive and effective pain management options, Defendants embarked on a scheme designed to convince consumers about the purported miraculous healing and pain relieving powers of Tommie Copper Products.

#### **Defendants Capitalize on Increasing Demand For Benign Pain Relief**

41. Tommie Copper was founded by Defendant Kallish, a middle-aged, self-professed weekend warrior who suffered a traumatic water skiing accident requiring multiple surgeries on his back, knees, and hips, leaving him with chronic and debilitating arthritic pain. Seeking to mitigate the pain from his condition, Kallish purportedly took to wearing compression sleeves for relief. According to Defendants, Kallish had also been studying the healing effects of copper related to the body, which has been used in medicine for thousands of

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<sup>19</sup> <http://www.tocris.com/researchArea.php?ItemId=116069#.VU0m8vIVhHw> (last visited July 31, 2015).

<sup>20</sup> <http://www.prnewswire.com/news-releases/drug-abuse-triggers-regulations-to-push-the-development-of-tamper-resistant-opioid-formulations-for-pain-management-300092848.html> (last visited July 31, 2015).

years.<sup>21</sup>

42. Utilizing his years of experience in the textile industry, Kallish sought to invent a better solution for pain management and/or tissue repair. Finding only uncomfortable and bulky medical compression garments available, he created Tommie Copper Products, which utilized “revolutionary, proprietary fabric,” incorporating copper yarn with compression technology.

43. According to Defendant Kallish, the results were nothing short of miraculous:

I had broken half of my body . . . I couldn't live in the pain I was in . . . If I didn't have that sleeve, I couldn't sleep at night . . . When I tell people this product works, I'm not telling you because I want you to buy one, I'm telling you this works because uh, you know this basically saved my life.<sup>22</sup>

44. With his new found lease on life, Defendant Kallish sought to introduce this “revolutionary breakthrough” solution and/or treatment for pain relief to the masses.

45. The foundation for Tommie Copper Products is a proprietary copper-infused thread. According to Defendants “Copper has been used in medicine for thousands of years, one of the world’s oldest medical texts, the EBERS PAPYRUS states, ‘Treat inflammation with pulverized copper’.”<sup>23</sup> Moreover, Defendants claim that the “symptoms of copper deficiency include osteoporosis, osteoarthritis, and rheumatoid arthritis.”<sup>24</sup>

46. Defendants further claim that the body uses copper to “stimulate[] the immune system to fight infections, to repair injured tissues, and to promote healing” and that “[c]opper has been shown to neutralize ‘free-radicals’ which can cause severe damage to cells.”<sup>25</sup>

47. As a result, Defendants represent both expressly and by implication that Tommie

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<sup>21</sup> <https://www.youtube.com/watch?v=KliqEk4xn7M> (last visited July 31, 2015).

<sup>22</sup> <https://www.youtube.com/watch?v=KliqEk4xn7M> (last visited July 31, 2015).

<sup>23</sup> <http://web.archive.org/web/20111005153718/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

Copper Products will purportedly, among other benefits, relieve arthritis and other chronic joint and muscular pain, aid in injury management, accelerate or speed recovery, neutralize “free-radicals” and improve in muscular power, strength and endurance.

48. Tommie Copper’s marketing has been highly effective. In 2010, its first year of operation, Defendants sold more than a million Tommie Copper Products, generating annual sales of \$25 million. By 2013, Defendants publicly reported that sales were on target to reach approximately \$60 to \$65 million. These benefits were directly conferred on Defendants as a they engaged in the direct sale of Tommie Copper Products to members of the proposed class.

49. Tommie Copper Products range in retail price from approximately \$19.50 to \$99.50.

50. Tommie Copper Products are or were available and sold online at [www.tommiecopper.com](http://www.tommiecopper.com) and/or [www.tommiecopper.tv](http://www.tommiecopper.tv). Tommie Copper Products are also sold through national retailers, including Vitamin Shoppe, Cabela’s, and Amazon.com.

**False and Misleading Marketing of Tommie Copper Products**

51. Defendants engaged in a massive, uniform marketing and advertising campaign designed to convince consumers that Tommie Copper Products have the ability to, significantly address pain relief, to repair injured tissues, promote healing or accelerate recovery, and improve muscular power, strength, endurance, and injury management.

52. Defendants disseminated materially false and misleading statements regarding the efficacy of copper-infused and/or “copper- and zinc-infused” Tommie Copper Products through a wide range of advertisement medium, including branded websites, brand sponsorship, earned advertising, cable and broadcast television, editorial content in magazines, and social media.

53. Defendants utilized, among other methods, direct response television marketing

(“DRTV”). DRTV marketing is a type of aggressive marketing campaign designed to generate an immediate response from consumers in the form of sales or product orders. The delivery of the response is direct between the viewer and the advertiser, as the customer responds to the marketer directly. In direct response marketing, marketers, including Defendants, use broadcast media (*i.e.*, cable and broadcast television) to get customers to contact them directly.

54. Typically, direct response television programs incorporate an infomercial in either short form (30 seconds to five minutes) or long form (approximately 30 minutes) direct response programs. The formats discuss and demonstrate products and provide a toll-free number or website for viewers to purchase the products. DRTV marketing creates rapid customer awareness and brand loyalty.

55. Moreover, because of this broad reach, DRTV can deliver a large volume of sales and customers.<sup>26</sup> This broad reach also allows the ability to leverage and improve all other medium’s results. Through a technique or strategy known as retail driving, Defendants are able to effectively drive retail sales through its nationwide infomercial and advertising programs.

56. Defendants’ infomercials aired on various nationwide networks including TV Guide, Speed Channel, Nat Geo Wild, A&E, and the Discovery Channel. In fact, between November 1, 2012 and October 31, 2013, Tommie Copper was ranked in the top five (5) for long form infomercials in total media dollars spent on programs aired on national cable networks.

57. For example, in one short form infomercial, which aired nationwide, Defendants depict scenes of individuals with restricted mobility or afflicted with debilitating conditions such as arthritis with a voice over that states: “Don’t let joint pains and aches caused by

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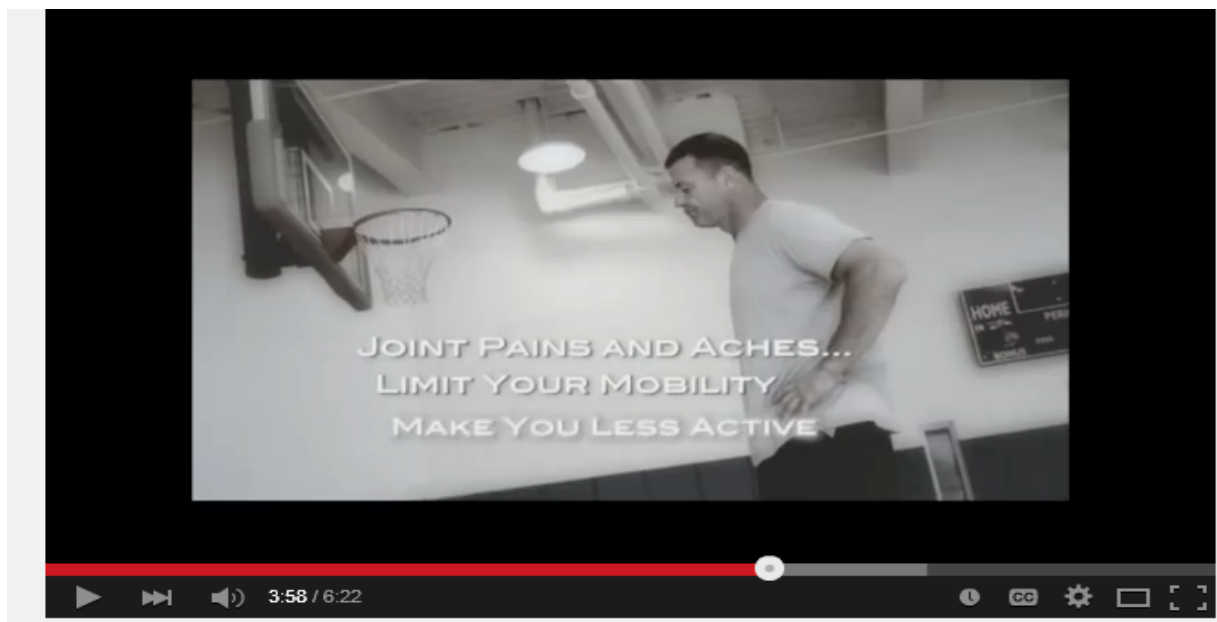
<sup>26</sup> In fact, this method of advertising is so successful that DRTV has ballooned into a \$350 billion dollar industry.

arthritis, aging, and injury limit your mobility and rob you of your active life. Stop letting pain get in the way of a good night sleep. Get moving again for less than \$25.”<sup>27</sup> The infomercial also touts that Tommie Copper Products have allowed “[m]illions of people [to] overcome obstacles and achieve[] their dreams . . .” and that “[t]he comfortable compression apparel that Tommie Copper designs has helped over one million people get back to doing what they love.”<sup>28</sup> Screenshots from the video advertisement featuring these misrepresentations are provided below:



<sup>27</sup> <https://www.youtube.com/watch?v=KliqEk4xn7M> (last visited July 31, 2015) (emphasis added).

<sup>28</sup> *Id.*



58. The infomercial also features Defendant Montel, who discusses his diagnosis with MS and his quest to relieve pain, stating “Tommie Copper compression wear works for me. I wear a Tommie Copper compression shirt when I work out and I no longer experience the



usual aches and pains and the stiffness and I can work out longer and harder than I have been able to do for years.”

59. In another infomercial, a spokesman recounts the success story of a golfer John McPhee, who was purportedly limited by pain so severe that he was restricted to “going up and down the stairs one at a time.”<sup>29</sup> Within a week of use, Mr. McPhee was purportedly reinvigorated by the astonishing powers of the Tommie Copper Product - “I felt like a new person.” Specifically:

**[MCPHEE]** I’ve been playing golf for a little over 42 years.

**[ANNOUNCER]** In 2002, at just 50 years old, after achieving his life-long dream of playing in the U.S. Senior Open...

**[MCPHEE]** I played all four rounds, made the cut and got a chance to play a practice round with Tom Kite.

**[ANNOUNCER]** The pain, especially in his knees, began robbing him of a proper swing.

**[MCPHEE]** I began a downward spiral where that pain seemed to really restrict my mobility. When I hit a golf shot, there just . . .there was nothing there. I tried to fight through it by playing, but the results were the same. A lot of bad swings, a lot of bad shots, a lot of bad rounds. I felt like this was a way of life. Going up and down the stairs one at a time; getting in and out of a car with the aches and pains was something I was going to live with. It was a very tough time for me. I did not want to play golf because I was embarrassed.

**[ANNOUNCER]** Then, a Tommie Copper sleeve changed everything.

**[MCPHEE]** Sometimes you say to yourself, well maybe this has to help. So I purchased a product and believe me, within a week, I felt like a new person. I found that my golf game improved a lot because I was able to have the lower part of my mobility, which I didn’t have for years, and I was able to play golf and strike the ball the way I knew I could. I do have more flexibility in my right leg. It got me to work the club more in the direction towards my target rather than around my target.

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<sup>29</sup> <https://www.youtube.com/watch?v=wt0rbKpzECk> (last visited July 31, 2015).

60. Additionally, the infomercial<sup>30</sup> features footage of Mr. McPhee and others actively playing golf with the caption “Reduce Pain . . . Improve Recovery,” reinforcing misleading advertizing claims. The video also features various screen shots of inflamed and “painful” joints further implying the healing abilities of the Tommie Copper Products. Screenshots from the video advertisement featuring these images and/or misrepresentations are provided below:



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<sup>30</sup> *Id.*



61. Another infomercial, which was aired nationwide on various occasions including Spike Network on December 28, 2013, features World Champion Bronco rider Shawn Minor, who claims Tommie Copper Products helped him obtain significant relief from numerous and serious job-related injuries, including a broken sternum, broken collar bone, and cracked neck vertebrae.<sup>31</sup> An excerpt of a transcript of the infomercial is provided below:

**[MINOR]** Eight (8) seconds. It is only 8 seconds but sometimes feels like an eternity. I don't know another sport as rough on you as riding bareback horse. It's ...the most physical demanding sport in rodeo and one of the most dangerous sports there is. I broke nine bones in my foot, broke my ankle, toes...uh, had a bull step on me and break my sternum in half. Broke both legs, had a knee pop out, cracked vertebrae in my neck, broke my collar bone, dislocated a shoulder, numerous fingers. You know, the list just goes on and on. And that stuff, when you get older, takes a lot longer to heal up.

<sup>31</sup> [http://www.commercialsihate.com/tommie-copper-fake-cowboy-and-his-chewin-tobaccy\\_topic16836.html](http://www.commercialsihate.com/tommie-copper-fake-cowboy-and-his-chewin-tobaccy_topic16836.html) (last visited July 31, 2015).

A friend of mine told me about Tommie Copper. He said you need to try it. So I got a shirt and some shorts and within 15 minutes, I could feel in my hips the shorts working. I started wearing the shirts and I have full rotation, full mobility in both my shoulders now that I haven't had in eight or ten years.

**[ANNOUNCER]** Tommie Copper is the next evolution in performance apparel. Copper-infused compression and exercise apparel that helps to relieve pain while increasing muscle and joint performance and recovery. Go to TommieCopper.com and enter "No Pain" for 10% off compression shorts, shirts, sleeves, and the full line of compression apparel starting at \$24.50.

**[MINOR]** My recovery time with wearing Tommie Copper is next to none. Since I've been using Tommie Copper, it's made me feel 10 years younger.

62. Another infomercial reinforces the debilitating effect of pain and how Tommie Copper is a non-prescription based solution that can help one "get your life back."<sup>32</sup> An excerpt of a transcript of the infomercial is provided below:

**[ANNOUNCER]** What if pain prevented you from doing your job?

**[COWBOY]** There's a few things in me that are slowing down with age. Your body just doesn't have it anymore.

**[RON]** It's pain; real pain. I was in so much pain; I could not maintain my business.

**[ANNOUNCER]** Or pursuing what you love.

**[GOLFER]** That pain seemed to really restrict my mobility. When I hit a golf shot, there was just...there was nothing there. I did not wanna play golf because I was embarrassed.

**[ANNOUNCER]** Or even got in the way of raising your kids.

**[APRIL THOMAS]** I wanted to just...give it up.

**[ANNOUNCER]** 100 million Americans live with pain.

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<sup>32</sup> <https://www.youtube.com/watch?v=gqNwNEc-Gfg> (last visited July 31, 2015).

**[RON]** I couldn't walk up the stairs.

**[ANNOUNCER]** All of us spend an average of \$2,000 every year for temporary relief. There is a solution

**[COWBOY]** Since I've been using Tommie Copper, it's made me feel 10 years younger.

**[GOLFER]** Wearing the Tommie Copper sleeve has not just helped me with my golf game; it's helped me with my life.

63. Moreover, the same infomercial reinforces the misleading notion that Tommie Copper Products can help consumers deal with serious medical conditions such as osteoarthritis and MS. For example, the infomercial discusses the plight of Karen Whiddon who was miraculously healed by a Tommie Copper Product:

**[WHIDDON]** For 15 years, I've been dealing with pain and I have been diagnosed with osteoarthritis. It felt like somebody had stood over the top of my hip with a shotgun and blasted down through my hip and it felt like my heel had been blown off. I thought that there was no way out. I didn't want to die. I felt worthless, you know. I wasn't doing my job as a mom.

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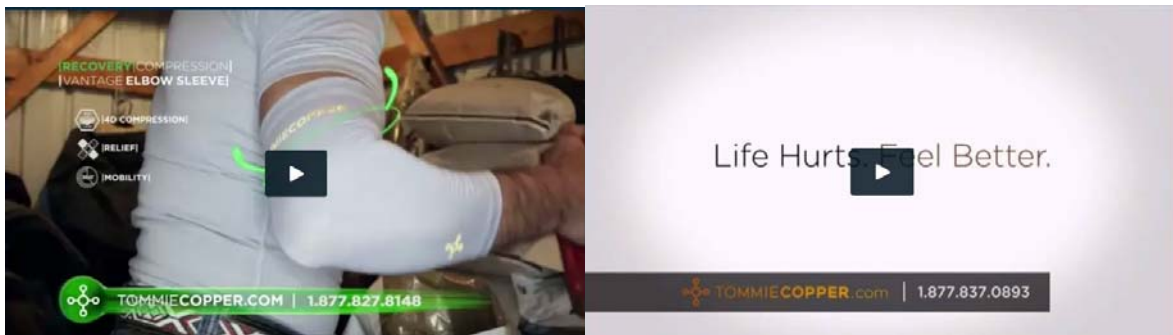
**[WHIDDON]** Immediately when I got the Copper gear in the mail, I put it on. And I would say within a couple of hours, I started to feel like my pain was retreating. I slept in it that night and by the next morning, I was completely pain free. I don't know how to describe it, it just...it was gone.

64. In two paid advertisements that aired as recently as May 7, 2015, on Discovery Life, one spokesperson claims "Tommie Copper compression helps enhance muscle and joint mobility." The spokesperson further stresses the ease and comfort of Tommie Copper Products and added that Tommie Copper Products "sooth[] [his] aches and pains."<sup>33</sup>

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<sup>33</sup> <http://www.ispot.tv/ad/7zBG/tommie-copper-compression-rodeo-and-ranch> (last visited July 31, 2015).

65. Another 60-second spot states, “Life hurts. Find relief with Tommie Copper.”<sup>34</sup>



66. Defendants’ false and misleading marketing campaign also includes representations made in editorial content for print magazine and digital media. For example, on April 12, 2012, Defendants issued a press release announcing the release of its copper-infused compression shorts. According to the announcement published on April 12, 2012:<sup>35</sup>

Tommie Copper has developed new and innovative compression shorts for men and women designed to help support pain relief and aid muscle recovery. The shorts utilize Tommie Copper Compression, a process that combines proprietary yarn with an exclusive multi-directional compressive weave. Since compression only works when you wear it, the shorts are designed to be worn all day, even when you sleep, while they help aid oxygen delivery to the muscles and relieve muscle pain from stiffness and soreness.

Tom Kallish, founder of Tommie Copper, explains that the final design of the shorts couldn’t have come sooner. ‘Tommie Copper’s comfortable compression line has had a tremendous response from those living with daily pain, however customers were asking for something that could provide supportive relief to help with muscle recovery in their hips. Having had lower and hip surgeries myself, I was the perfect test subject to begin developing them . . . .’

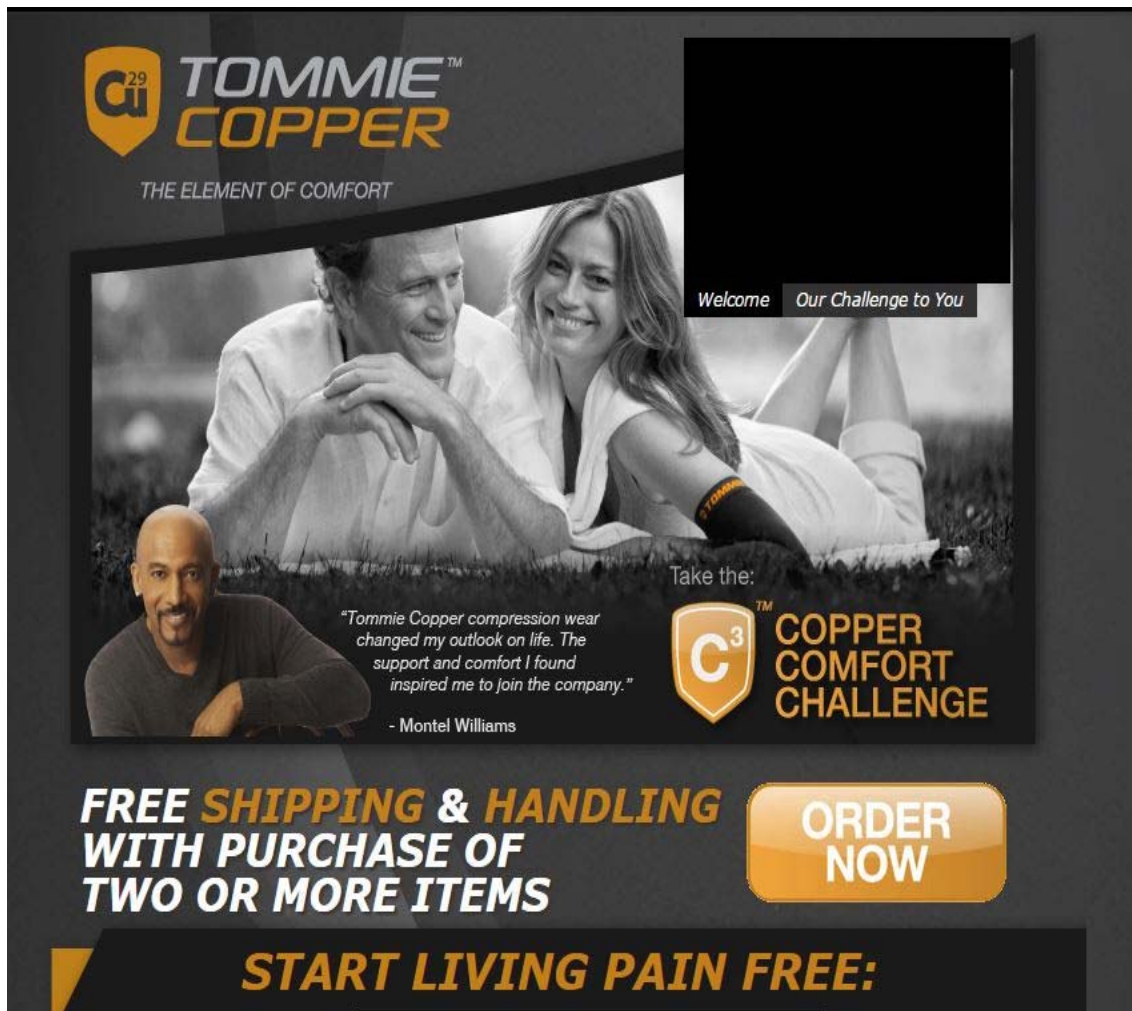
67. Tommie Copper’s websites are also replete with misleading advertisements touting the benefits of copper and the ability of Tommie Copper to provide dramatic pain relief

<sup>34</sup> <http://www.ispot.tv/ad/7x4X/tommie-copper-joint-effort> (last visited July 31, 2015).

<sup>35</sup> *Tommie Copper Releases Innovative Compression Shorts for Supportive Relief*, <http://www.prweb.com/releases/2012/4/prweb9398614.htm> (last visited July 31, 2015).



from debilitating ailments. For example, on [www.tommiecopper.tv](http://www.tommiecopper.tv),<sup>36</sup> Defendants prominently feature Defendant Montel along with the slogan: “Start Living Pain Free.”<sup>37</sup>



68. Moreover, the frequently asked questions (“FAQ”) section of the website repeats the account of Defendant Kallish’s “traumatic water skiing accident” and how that incident led to the development of a revolutionary product that “provide[s] relief from arthritis and other

<sup>36</sup> By mid-2013, this website was redirected to Defendants’ main branded website ([www.tommiecopper.com](http://www.tommiecopper.com)).

<sup>37</sup> See <http://web.archive.org/web/20111028102828/http://www.tommiecopper.tv/> (accessed by searching for <http://www.tommiecopper.tv/> in the Internet Archive index) and <http://web.archive.org/web/20130126130957/http://www.tommiecopper.tv/> (accessed by searching for <http://www.tommiecopper.tv/> in the Internet Archive index).

joint pains, promote muscle recovery and reduce inflammation”:<sup>38</sup>

**Q. How was Tommie Copper started?**

Tommie Copper was founded by Tom Kallish, a middle-aged and self-professed weekend warrior, who suffered a traumatic water skiing accident requiring multiple surgeries on his back, knees and hips leaving him with chronic debilitating arthritic pain. Finding only uncomfortable, restrictive and bulky medical compression available, he created Tommie Copper compression wear. This unique compression uses multi-directional support and proprietary copper-infused yarn to provide relief from arthritis and other joint pains, promote muscle recovery and reduce inflammation all while being comfortable enough to be worn throughout the entire day.

69. Similarly, the website touts the medicinal benefits of copper to stimulate the immune system and repair injured tissue. Moreover, they are designed to mislead consumers into believing that that copper is a scientifically proven remedy for pain and injury relief:<sup>39</sup>

**How is copper used in medicine?**

Copper has been used in medicine for thousands of years, one of the world’s oldest medical texts, the EBERS PAPYRUS states, “Treat inflammation with pulverized copper.” Copper also stimulates the immune system to fight infections, to repair injured tissues, and to promote healing. Copper has been shown to neutralize “free-radicals” which can cause severe damage to cells. Symptoms of copper deficiency include osteoporosis, osteoarthritis, and rheumatoid arthritis.

**How does the body use copper?**

Copper is necessary for the growth, development, and maintenance of bone, connective tissue, brain, heart, and many other body organs. It is involved in the formation of red blood cells, the absorption and utilization of iron, and the synthesis and release of life-sustaining proteins and enzymes. These enzymes in turn produce cellular energy and regulate nerve transmission, blood clotting, and oxygen transport.

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<sup>38</sup> <http://web.archive.org/web/20111105023609/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

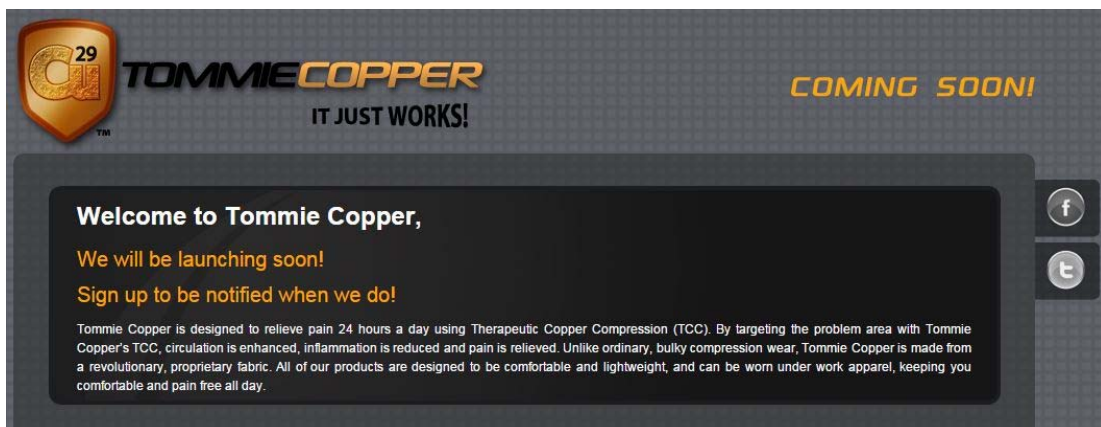
<sup>39</sup> *Id.*



Copper stimulates the immune system to fight infections, repair injured tissues, and promote healing. Copper also helps to neutralize “free-radicals” which can cause severe damage to cells.

Symptoms of copper deficiency include osteoporosis, osteoarthritis and rheumatoid arthritis.

70. This message was repeated in subsequent and/or additional websites owned and operated by Defendants. For example, prior to the official launch of its branded website ([www.tommiecopper.com](http://www.tommiecopper.com)), Defendants represented on the landing page that “Tommie Copper is designed to relieve pain 24 hours a day using Therapeutic Copper Compression (TCC).”<sup>40</sup> Defendants try to differentiate Tommie Copper Products from other “ordinary, bulky compression wear” by pointing to the use of its “revolutionary” and proprietary copper-infused fabric.



71. Once again, Defendants include a fact section with similarly misleading language. For example, the FAQ section states that “Tommie Copper is dedicated to helping people suffering from pain improve their quality of life.”<sup>41</sup> Moreover, that Tommie Copper

<sup>40</sup> <http://web.archive.org/web/20110208131748/http://www.tommiecopper.com/> (accessed by searching for <http://www.tommiecopper.com/> in the Internet Archive index).

<sup>41</sup> <http://web.archive.org/web/20110504135128/http://tommiecopper.com/faq> (accessed by searching for <http://tommiecopper.com/faq> in the Internet Archive index).

Products “are designed to be worn by anyone seeking relief from daily aches and pains.”<sup>42</sup> This includes “everyone from marathon runners to **arthritis sufferers**” or “everyone from Olympic runners to grandmothers who like to garden”.<sup>43</sup>

Who wears Tommie Copper?

Tommie Copper products are designed to be worn by anyone seeking relief from daily aches and pains. Everyone from marathon runners to arthritis sufferers can benefit from the combination of copper infused yarn and the unmatched comfort provided by Tommie Copper Cu29 Copper Compression wear.

Who wears Tommie Copper?

Tommie Copper products are designed to be worn by anyone seeking relief from daily aches and pains. Everyone from Olympic runners to grandmothers who like to garden can benefit from the combination of copper infused yarn and the comfortable compression provided by Tommie Copper Compression wear.

72. Defendants also extol the benefits of copper in the FAQ section and a separate section known called “Copper Facts” to mislead consumers into believing that copper is a scientifically proven remedy for pain and injury relief. For example, Defendants represent: (1) “copper has been used in medicine for thousands of years;” (2) copper “has been shown to neutralize ‘free-radicals’;” and (3) “symptoms of copper deficiency include osteoporosis, osteoarthritis, and rheumatoid arthritis.”<sup>44</sup>

73. Defendants’ website also prominently features client testimonials in order to convey the message that Tommie Products are effective for pain relief and other serious ailments, including Lyme disease, arthritis, and MS. The website also maintained a “One million stories of relief” and section titled “featured testimonial” noting “Tommie Copper has already transformed thousands of lives; how can Tommie Copper transform you?” None of the

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (emphasis added); <http://web.archive.org/web/20110820043922/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

<sup>44</sup> <http://web.archive.org/web/20111005153718/http://www.tommiecopper.com/faq> (accessed by searching for <http://www.tommiecopper.com/faq> in the Internet Archive index).

advertisements,<sup>45</sup> however, disclose whether the results are typical:

**Sonny** - New York - I'm Sonny, I'm 53 years old and I'm a contractor. The type of work I do is all lifting. I'm constantly abusing my body and it's been 32 years I've been doing this. So I need to get relief wherever I can. We're always putting back braces on and things like that to support our backs, but you can't work in them. I was wearing the Tommie Copper shirt yesterday on the job, and it was fantastic. It was very comfortable, I could move, I could reach. It didn't pull or hold me back like other supports do. You don't even know that it's supporting you and that's what I liked about it. When I wear the Tommie Copper shirt, I can bend over and it gives me that little support, that edge so you can continue to work in comfort.

**Holly H.** - New York, NY - I started training for a marathon, which was the best thing I've ever done and I loved it. I started running a lot and of course my knee gave out, and I developed arthritis in my knee. I've been through about 4 or 5 different types of running sleeves from my doctor, and if they didn't slip (which they always did) they'd be so uncomfortable, tight and thick. And I felt the circulation was cut off in my legs and I had to take it off. So I was better off without the sleeve. But the Tommie Copper sleeve was so thin and comfortable I didn't feel it. When I have it on, I feel a difference. My knee wasn't aching, I could run, it didn't hurt and I'm totally sold.

**Joseph B.** - Bedford Hills, NY - When I was a young kid, I was affected by Lyme's Disease when I was bit by a tick. A side effects of Lyme's disease is arthritis, so I get pains all over my joints. Usually around 3 hours into work, I can barely feel my arms and I'm exhausted, but when I had the sleeve on, my elbow was no longer in pain. It was like having a brand new arm. It's amazing, it's really amazing.

**Fiona M.** - Bedford Hills, NY - I can't thank you enough for coming up with your Tommie Copper knee wrap. It is not an exaggeration to say that it really has transformed my life! I've had an arthritic knee for about four years – x-rays and MRIs show that the cartilage is totally worn away. I've been on Glucosamine and Chondroitin and MSM for three years I've taken hyaluronic acid supplements and have had hyaluronic acid and cortisone shots. Nothing has had the same effect as your wrap. It literally worked overnight. The real test came this past Saturday, when I spent the whole day gardening. I usually have to take a

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<sup>45</sup> <http://web.archive.org/web/20111228032325/http://www.tommiecopper.com/testimonials> (accessed by searching for <http://www.tommiecopper.com/testimonials> in the Internet Archive index).

maximum dose of anti-inflammatories after a day of gardening to make sure that I can walk the next day. Thanks to the Tommie Copper wrap I needed no medication at all, and felt so great that I worked in the garden all Sunday too! This is an incredible product. Let me know when you come up with the full body suit – I'll be your first customer!

**Dewayne B** - Colorado Springs, CO - I was diagnosed with MS in 2009 and the last few months I have been getting a lot of joint pain in my elbows. I started to wear the Tommie Copper sleeves for the last 3 weeks and I feel a BIG improvement in my elbows. I can't wait to order a Tommie Copper shirt. THANKS GUYS YOU ROCK!!!

**Nicole P.** - Whippany, NJ - Let me start off by saying that I am in no way, shape or form a doctor! But I can say that I will give my opinion and advice to products that I believe in. With that said, I am a firm believer in Tommie Copper and highly recommend it! I am a beginner runner and a mom of three who may have jumped into the love of running a bit too quickly. I injured my knee and developed Iliotibial Band syndrome with a bit of tendonitis in my right knee. I was advised to wear a knee brace and to discontinue running (or any cardio activity putting stress on the knees) for 4 weeks. Well doesn't that put a damper on a stressed out mom! Hopping around on a painful ache-y knee was really becoming a burden and I was a bit worried about my future long runs. I received a Tommie Copper knee sleeve and wasn't quite sure what to think about it but was excited none the less to try something different; a bit desperate to be honest. When I opened the package I had sort of a "bummer" reaction because of how lightweight the material was. I thought: "how could this possibly help with my pain. I need support." WELL, let me tell you, within the first 10 minutes of walking around I had very little, almost no more pain! I wore the sleeve for a few more hours and the pain literally dissipated. I will continue using their products and advise all my friends to check it out! Thank you Tommie Copper, this is one happy customer! Looking forward to trying some more of your products!

**Rosie S.** - Hawthorne, NY - In December 2009, I slipped and fell on a patch of black ice outside of my home. Since then, I've had excruciating pain in my shoulder. I tried physical therapy for months, but recently stopped going in May because it was a waste of time and money. Since wearing your Tommie Copper T-shirt, my pain is virtually gone. I was not able to lift my arms above my shoulders and I now have full range of motion. I can't thank you enough for this mini miracle.

**Dr. Stein** - Yorktown Heights, New York - I have been a practicing dentist for 15 years. I have been living with ongoing pain in my arm and elbow that has not allowed me to work to my fullest and has required me to take pain medication. When my patient Tom gave me his copper sleeve to try I was amazed. I can now throw a football 30 yards with my children and have not needed to take any medication what so ever. This has truly been not only a career changing experience, but also a life changing one as well. Thank you "Tommie Copper"

**Robert Z.** – California - After watching Montel I decided to give the Tommie Copper Knee Sleeve a try. I have never been a believer in any type of homeopathic remedy or copper bracelets or any thing beyond the scope on Western Medicine without laboratory double-blind studies. My right knee has been so bad that I have been unable to boost myself into my four wheel drive truck without at least three tries because of the excruciating pain. I have also been unable to stand up out of low couches or seats of any kind or to squat down without grabbing something and pulling myself up. Within twenty-four hours of wearing your Knee Sleeve I am able to do all of those things WITHOUT problem. I won't say that my knee pain is totally gone - but it is at least 80% resolved. I AM TOTALLY ASTOUNDED! Whatever magic the Knee Sleeve is doing, it is doing it exceptionally well - and I am not even going to question HOW. All I care about is that the thing actually works and is not an infomercial scam or junk! I have tried all manner of compression sleeves in the past and also frequently wear a knee brace. Nothing has ever given me any relief except your Knee Sleeve. My comments are an unsolicited recommendation of your products and I have no affiliation with your company nor am I soliciting compensation in any way. I just wanted to say THANK YOU - your products are a winning class act!

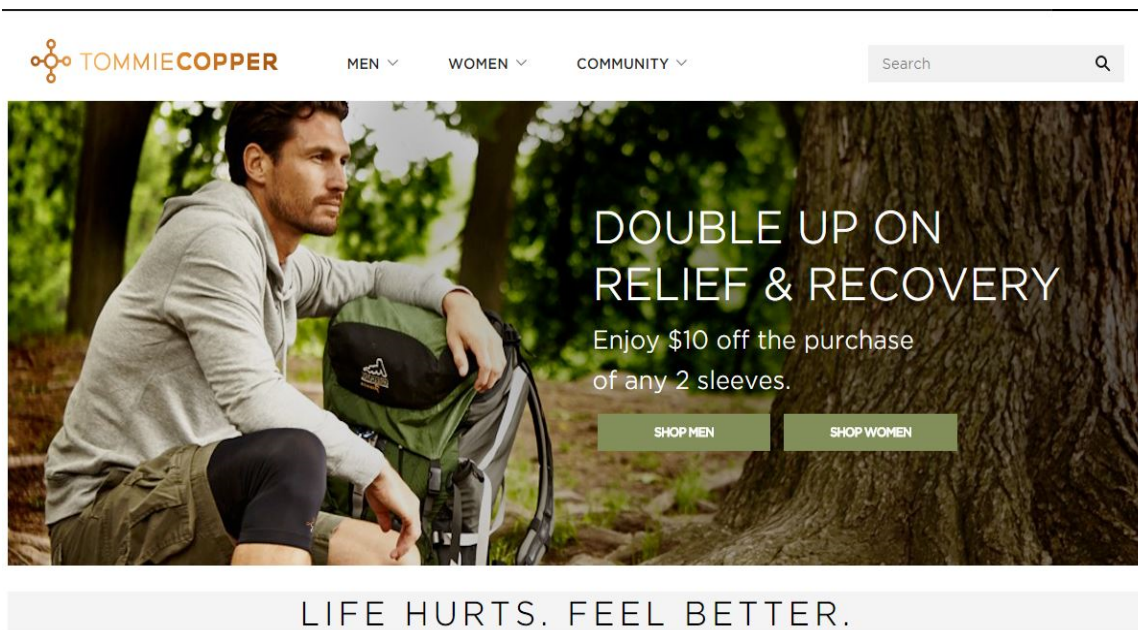
**Bertie M.** - Oxford, England - I recently arrived from Fiji. I had contracted some sort of infection and the plane ride to America made my ankles swell up like balloons. My brother, Luke who is a friend of Tom's picked me up at the airport and immediately gave me two Tommie Copper compression calf sleeves which Tom had given him. Within 24 hours, the swelling had completely gone away. I'm not sure what's in this stuff, but I can't thank you enough.

**Anja G.** - Los Angeles, CA - I am a former elite and Division 1 gymnast. I have competed for 16 years in gymnastics, enough to bang the body up more than a lil bit! My freshman year in college I was devastated with a torn ulna collateral ligament in my elbow. After reconstructive surgery, Tommy John surgery for all you baseball fanatics out there, and over a year of recovery my elbow never quite regained all its strength. I have tried wraps, and braces but there were all too



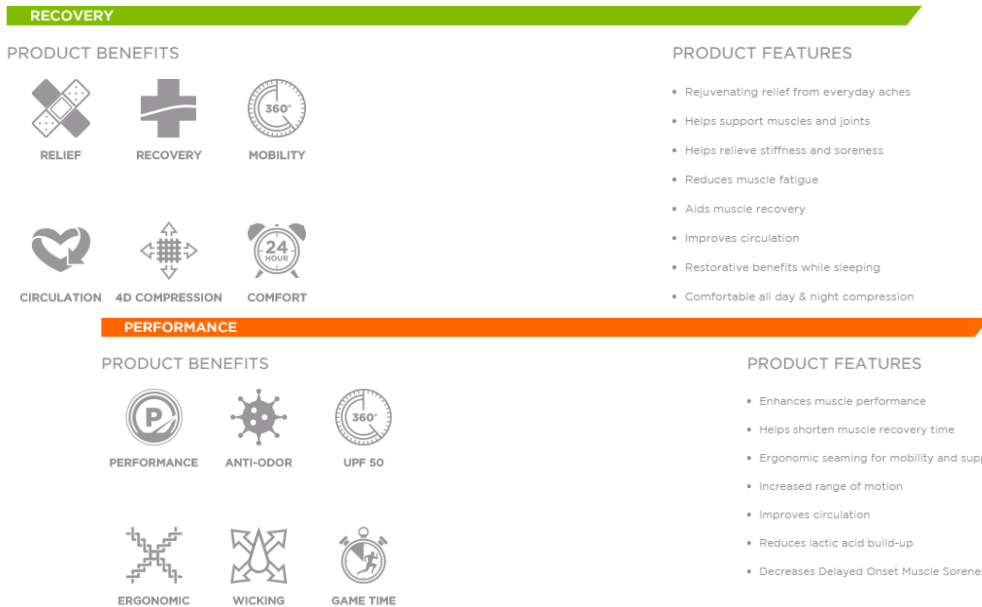
bulky, cumbersome, and quite frankly were big but didn't give me the support in the joint I needed to keep teaching my classes pain free. Fast forward 9 years after surgery and I've still struggled to find something that could support me through my active lifestyle of being a nurse, a fitness trainer, and a health coach. I tried the Tommie Copper elbow sleeve and its sleekness enabled me to complete my movements in my workout but gave me that extra support and stability that kept me safe and for the first time, pain free!! I recommend these elbow sleeves if you have had surgery, or suffer from joint pain and arthritis. The lightweight makes them comfortable but doesn't take away from any of the support! Thank you Tommie Copper! :) My elbow loves you!

74. Defendants continue to tout the efficacy of Tommie Copper Products for pain relief through to 2015.<sup>46</sup> Defendants' branded website has a slogan, "Life Hurts. Feel Better."



75. Defendants' website is also replete with misleading advertisements that stress the technology and features of Tommie Copper Products, which purportedly provide, among others benefits: (1) rejuvenating relief from everyday aches; (2) support for muscles and joints; (3) relief from stiffness and soreness; and (4) decrease in delayed onset muscle soreness.

<sup>46</sup> <http://web.archive.org/web/20150506163058/http://www.tommiecopper.com/> (accessed by searching for <http://www.tommiecopper.com/> in the Internet Archive index).



76. Defendants also utilized strategic marketing tactics such as event and foundation sponsorships with various not-for-profit organizations or medical foundations to promote their misleading advertising campaign. For example, Defendants sponsored events held by the Arthritis Foundation (the leading nonprofit organization dedicated to the prevention, control and cure of arthritis), including the foundation's Jingle Bell Run/Walk in 2012 and 2013 to convey their misleading pain relief campaign. Promotional releases for the 5k run/walk describes Defendants as "the leader in comfortable copper compression gear, and '**pain relief without a pill.**'"<sup>47</sup>

77. Moreover, at the Jingle Bell Run/Walk in 2012, Defendants were at the race to hand out free Tommie Copper Products.<sup>48</sup> Additionally, in 2013, a film crew was at the Jingle

<sup>47</sup> <http://web.archive.org/web/20150508132617/http://www.cliftonpark.org/arthritis-foundation-and-great-escape-partner-for-second-annual-jingle-bell-run/> (accessed by searching for <http://www.cliftonpark.org/arthritis-foundation-and-great-escape-partner-for-second-annual-jingle-bell-run/> in the Internet Archive index) (emphasis added).

<sup>48</sup> <http://web.archive.org/web/20121111202015/http://www.tommiecopper.com/resources/blog/tommie-copper-sponsors-jingle-bell-run-arthritis> (accessed by searching for

Bell Run/Walk to film part of Defendants' next infomercial.<sup>49</sup>

78. Defendants also repeat these misrepresentations in various marketing materials and/or Product brochures. For example, one of Tommie Copper's brochures regarding its Knee Sleeve states Tommie Copper Products "help relieve arthritis and other chronic joint and muscular pain, promote muscle recovery and aid performance" and "decreases inflammation." A copy of the brochure featuring these misrepresentations is provided below:

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<http://www.tommiecopper.com/resources/blog/tommie-copper-sponsors-jingle-bell-run-arthritis> in the Internet Archive index).

<sup>49</sup> Krystle S. Morey, *Running to beat the pain: 5K benefits Arthritis Foundation*, July 13, 2013, [http://poststar.com/news/local/running-to-beat-the-pain-k-benefits-arthritis-foundation/article\\_53e1ffd8-ebfe-11e2-9b44-001a4bcf887a.html](http://poststar.com/news/local/running-to-beat-the-pain-k-benefits-arthritis-foundation/article_53e1ffd8-ebfe-11e2-9b44-001a4bcf887a.html) (last visited July 10, 2015).





## KNEE COMPRESSION SLEEVE



**Colors:** Black  
Cobalt Blue  
Slate Gray

**Content:** 57% Copper-Nylon  
29% Nylon  
14% Spandex

**Sizes:** S- XXXL

**Price:** \$24.50

### Features & Benefits:

Tommie Copper's comfortable knee compression sleeve uses Therapeutic Copper Compression to help relieve arthritis and other chronic joint and muscular pain, promote muscle recovery and aid performance.

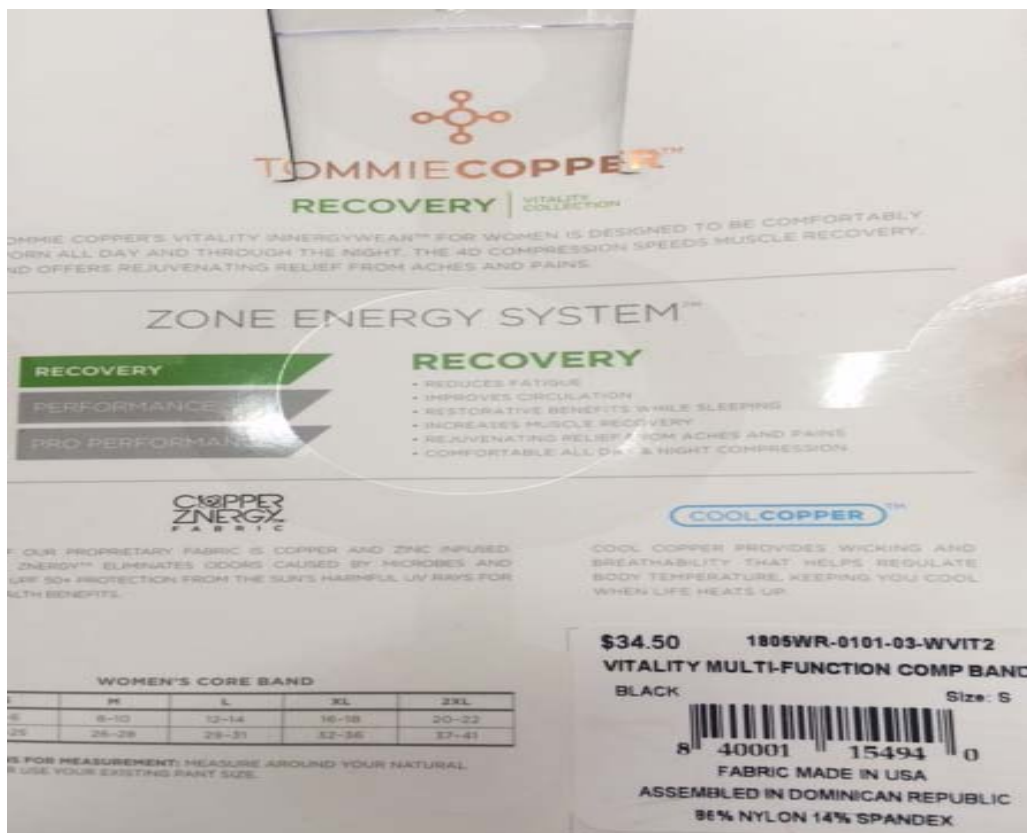
- Features Therapeutic Copper Compression™
- Highly wickable fabric keeps skin dry
- Stimulates blood flow, decreases inflammation and increases mobility
- Gentle effective compression allows for 24 hour use, even while asleep
- Comfortably and discreetly wear under pant or dress
- Machine washable. Do not use bleach, fabric softeners or dryer sheets

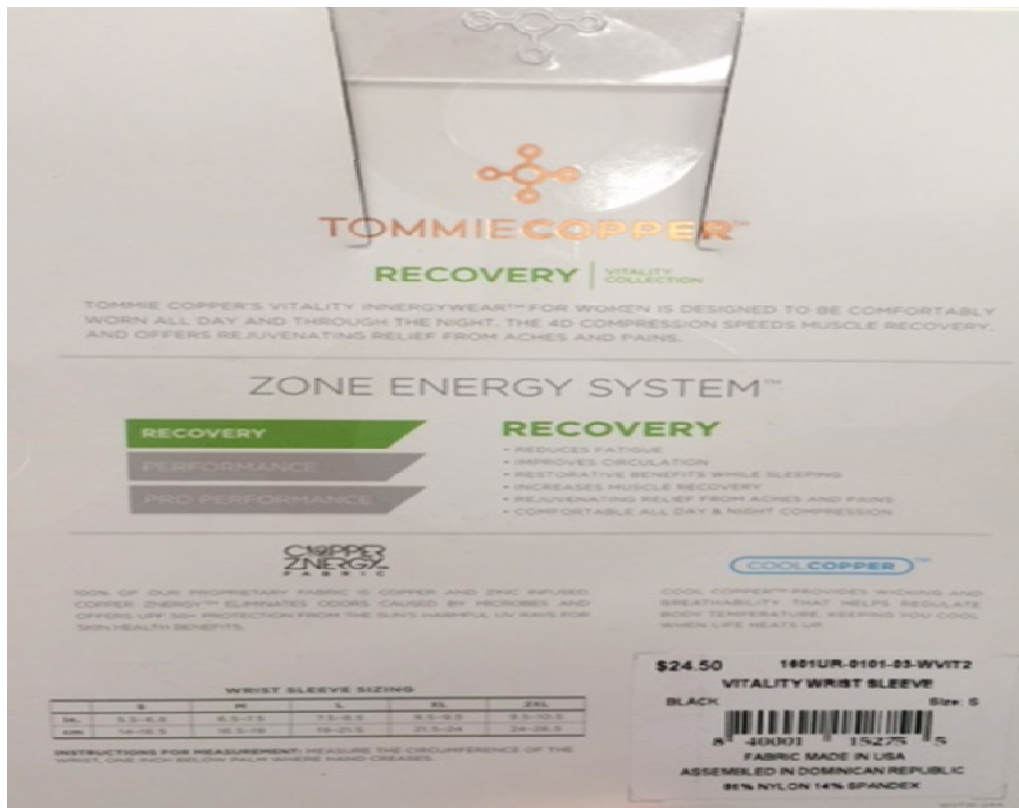


79. Similarly, Defendants' brochures highlight the purported "Power of Copper" and the ability of Tommie Copper Products to "Relieve Pain," neutralize "free radicals," "increase oxygen transport to muscles," and "Speed Recovery" or "Speed muscle and joint recovery":



80. Defendants' false and misleading advertising campaign also includes representations made on retail store display racks and Product packaging. For example, Defendants represent on the back of Tommie Copper Products that the Products can provide: "reduce[d] fatigue," "speeds muscle recovery," "restorative benefits," "improve[d] circulation," and "rejuvenating relief from aches and pains":





81. Defendants make the same representations on retail store display racks.



82. Additionally, Defendants' false and misleading marketing campaign includes representations made on various social media websites. For example, Defendants utilize Twitter as a platform to share reviews that are often solicited by Defendants to reinforce Defendants'



misleading pain relief campaign. Below are screenshots of Defendants' solicitations:



83. Defendants' social media posts also reiterate the benign pain relieving benefits of Tommie Copper Products, with phrases such as "Pain Relief without a pill!," "Live with Less Pain" or that the Products are designed to relieve "Arthritis, aches and pains in your hands and fingers":





84. Defendants' social media posts state that Tommie Copper Products "[act] as a support to aching joints/muscles & [deliver] the benefits of copper @ the point of your discomfort," "[help] w/ pain/inflammation," and "are great for Chronic pain relief."



85. Defendants' social media posts also assert that the Products offer relief from arthritis pain and other chronic conditions:



**Tommie Copper™** @tommiecopper

@SuziStorm Yes, Our Knee Compression Sleeves helps relieve arthritis and other chronic joint and muscular pain.

🐦 2 years ago ↩️ Reply 🔄 Retweet ☆ Favorite



**Tommie Copper™** @tommiecopper

@DonFidelity Check out Tommie Copper Socks great for Arthritis pain [bit.ly/WbHjt1](http://bit.ly/WbHjt1)

🐦 2 years ago ↩️ Reply 🔄 Retweet ☆ Favorite 💬 1 more



**Tommie Copper™** @tommiecopper

@DrNadyaSwedan Suffering from Arthritis check out Tommie Copper Compression wear for every part of the body [tommiecopper.com](http://tommiecopper.com)

🐦 2 years ago ↩️ Reply 🔄 Retweet ☆ Favorite



**Tommie Copper™** @tommiecopper

@kellys5 @vgunvalson Comfortable pain relief for Arthritis check out Tommie Copper [bit.ly/WbHjt1](http://bit.ly/WbHjt1)

🐦 2 years ago ↩️ Reply 🔄 Retweet ☆ Favorite



**Tommie Copper™** @tommiecopper

@smashishmathew Suffering from Arthritis? Check out Tommie Copper compression wear to relieve you of pain [bit.ly/WbHjt1](http://bit.ly/WbHjt1)

🐦 2 years ago ↩️ Reply 🔄 Retweet ☆ Favorite

### **The Peddlers and Purveyors of Tommie Copper's Miracle Cure**

86. To promote its scheme, Defendants feature the endorsements of Defendant Kallish, Tommie Copper's CEO, and Defendant Montel, a well-known celebrity spokesman.

87. In a profile of Defendant Kallish in the spring issue of Moves Magazine in 2012, Kallish prides himself on the "innovative" idea to utilize metallotherapy – a folklore remedy for pain and inflammation – in an effort to relieve pain. According to the profile reprinted on Defendants' blog, Kallish made the following representations:<sup>50</sup>

Two and a half years ago, I was involved in a serious water skiing accident that required multiple surgeries on my back, knees and hip. The only therapies available were draconian medical compression products and heavy-duty narcotic pills. Working in textiles, I was introduced to a technology company that was making exciting inroads infusing copper-oxide into a variety of mediums. Selfishly thinking, I set about creating a thinner, gentler compression garment for

<sup>50</sup> <http://web.archive.org/web/20120530040324/http://www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper> (accessed by searching for <http://www.tommiecopper.com/resources/blog/ny-moves-magazine-features-tommie-copper> in the Internet Archive index) (emphasis added).



24 hour wear and combined it with the anti-inflammatory properties of copper, hoping I might find some relief.

I knew I had something larger when Montel Williams contacted me after receiving the product from a friend, ecstatic about the relief he found from his painful Multiple Sclerosis, and asked how he could join the company. I guess the irony is, with all of the modern advances in science, it took something that has been used for thousands of years in medicine—albeit approached in a new way—to find relief.

(When asked for the scientific reasoning behind Defendants' Products)

Compression counters swelling and inflammation that occurs from tissue over-use and the fluids that gather as a result of gravity. Copper has shown to repair damaged tissue and reduce inflammation by binding with copper-deficient enzymes once absorbed in the skin. By combining these two therapies, it allows for an ultra thin, gentle compression garment that can be worn alone or under clothing for a full 24 hours of relief.

88. Additionally, Defendant Kallish personally appears on numerous advertisements and promotional material, including many of the infomercials that aired nationwide. Among other techniques, Kallish consistently uses his personal story of having suffered debilitating arthritis as a marketing strategy to promote Tommie Copper Products. For example, Kallish appears in a lengthy infomercial with the subtitle “Tommie Copper helped him recover from devastating accident.” A screenshot from the infomercial<sup>51</sup> featuring Defendant Kallish is provided below:

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<sup>51</sup> <https://www.youtube.com/watch?v=gqNwNEc-Gfg> (last visited July 31, 2015).

**IN THE UNITED STATES COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WILLIAM LUCERO, RHONDA BOGGS,  
JEROME JEFFY, and SANDY KONTURA,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

TOMMIE COPPER INC., TOMMIE COPPER  
HOLDINGS, INC., THOMAS KALLISH and  
MONTEL WILLIAMS,

Defendants.

Civ. Action No. 15-6055

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**COMPLAINT PART 2**



89. Moreover, in the FAQ section of Defendants’ website, Defendants represent that Kallish created Tommie Copper Products after suffering a “traumatic water skiing accident requiring multiple surgeries on his back, knees and hips leaving him with chronic debilitating arthritic pain.”<sup>52</sup>

#### [How was Tommie Copper started?](#)

Tommie Copper was founded by Tom Kallish, a middle-aged and self-professed weekend warrior who suffered a traumatic water skiing accident requiring multiple surgeries on his back, knees and hips leaving him with chronic debilitating arthritic pain. Finding only uncomfortable, restrictive and bulky medical compression available, he created Tommie Copper compression wear. This unique compression uses multi-directional support and proprietary copper-infused yarn to provide relief from arthritis and other joint pains, promote muscle recovery and reduce inflammation all while being comfortable enough to be worn throughout the entire day.

90. In a video clip posted by Defendant Tommie Copper in 2014, Kallish described

<sup>52</sup> <http://web.archive.org/web/20111105023609/http://www.tommiecopper.com/faq> (accessed by searching for <http://web.archive.org/web/20111105023609/http://www.tommiecopper.com/faq> in the Internet Archive index).

how he came to develop Tommie Copper Products:

Back in 2010, I had a very serious water skiing accident, my body was really broken up, but my knee took the hit. At the same time, I started identifying the well-known benefits of compression. It became simple, design the most comfortable compression product available. I came up with a couple of prototype and I was pretty amazed. So I had a few more made up and I passed them to my friends and family. I was overwhelmed by the response. From there, the company was born.

91. In a separate video introducing Defendant Kallish as the recipient of the 2014 Business Council of Westchester Entrepreneurial Success award, Kallish reiterated his personal story of having suffered a “serious accident” that led him to create the brand and company, stating: “. . . I lost every disc in my neck, all four discs in my back, both knees and both hips. I went and develop this product made of copper yarn to mitigate my own pain. It worked so well that I decided to start a company called Tommie Copper.”<sup>53</sup>

92. Defendant Montel also appears in numerous advertisements and promotional materials, including many of the infomercials that aired nationwide, touting the miraculous benefits of Tommie Copper. For example, Montel appeared in an interview with Examiner.com published on May 24, 2012, expressing that he has been working with Defendants, “a company that has copper infused cloth that is anti-bacterial, anti-microbial, anti-viral but also has some other incredible capabilities when used in compression garments like pain relief, a mitigation of inflammation.”<sup>54</sup> Defendant Montel further represents that Defendants’ Products “can reduce swelling,” “increase mobility,” and “increase blood flow.”<sup>55</sup>

93. Similar to Kallish, Defendant Montel uses his personal diagnosis with MS, a debilitating autoimmune disorder, to hawk the sale of Tommie Copper Products. For example,

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<sup>53</sup> <https://www.youtube.com/watch?v=eT37qftYI9E> (last visited July 12, 2015).

<sup>54</sup> Taylor Sparks, *Interview: Montel Williams on Living Well and the Health Master Elite*, Examiner.com, May 24, 2012, <http://www.examiner.com/article/interview-montel-williams-on-living-well-and-the-health-master-elite-2> (last visited July 31, 2015).

<sup>55</sup> *Id.*

in a nationwide aired infomercial,<sup>56</sup> Montel claims:

When you're in pain, you can't focus on anything but the pain. Believe me, I know. Since my diagnosis with MS, I've been on a quest to relieve my pain. Tommie Copper compression wear works for me. I wear a Tommie Copper compression shirt when I work out and I no longer experience the usual aches and pains and the stiffness and I can work out longer and harder than I have been able to do for years.

94. A screenshot from the video advertisement featuring Defendant Montel is provided below:



95. In a separate 60-second spot that aired on cable television, Montel also makes the following claim:

Since my diagnosis with MS more than a decade ago, nothing's been more important to me than managing my pain. I started wearing Tommie Copper compression shirts a few months ago and I experienced a difference immediately. Tommie Copper compression wear is made with an exclusively patented copper infused fabric. Copper is well known for its anti-inflammatory properties, and inflammation is one of the major causes of pain.

<sup>56</sup> <https://www.youtube.com/watch?v=KliqEk4xn7M> (last visited July 31, 2015).

96. In one of Defendants' infomercials, Montel knocks on the door of an alleged pain sufferer and introduces himself as "[her] Tommie Copper delivery man." Defendant Montel expresses that he heard the individual suffered from pains around her hands and instructs her to use a certain Tommie Copper Product for the next two weeks.<sup>57</sup>

97. In that same infomercial, Defendant Kallish appears to talk about Tommie Copper Products that he created and the remarkable benefits that can be obtained from their use:

I had broken half of my body ... *I couldn't live in the pain I was in* ... If I didn't have that sleeve, I couldn't sleep at night ... When I tell people this product works, *I'm not telling you because I want you to buy one*, I'm telling you this works because uh, you know *this basically saved my life*.<sup>58</sup>

98. Further, Montel, as the consummate pitchman, emboldens the misleading advertising campaign stating: "The fact that you even recovered from this accident, to me, is just ... a miracle." Moreover, Montel continues on suggesting that after personally wearing a certain Tommie Copper Product every day, for the past six months, he strongly believes that Tommie Copper Products "can give you your life back. Period."<sup>59</sup>

99. Separately, Montel appeared on an episode of The Dr. Oz Show (aired on February 9, 2012) and in a segment called "Best Breakthroughs to Fight Your Pain,"<sup>60</sup> Montel recommended a certain Tommie Copper Product, stating:

... I had my left shoulder rebuilt in a surgery, which is a rotator cuff surgery and *lost almost 15 percent of my mobility*. I started wearing this shirt two years ago. *This shirt now has given me back about 9 to 10 percent of that mobility* that I've lost ... Less than a year ago I couldn't put both shoulders up so this has

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<sup>57</sup> <https://www.youtube.com/watch?v=KliqEk4xn7M> (last visited July 31, 2015).

<sup>58</sup> *Id.* (emphasis added).

<sup>59</sup> *Id.*

<sup>60</sup> <http://www.doctoroz.com/episode/has-montel-williams-discovered-fountain-youth> (last visited July 31, 2015) (emphasis added).

given me [sic] back. Now ... If you have a knee problem, a back problem we have a brace for you, knee problem, elbow, carpal tunnel syndrome ...

100. Defendants also capitalized on the growing interest of Tommie Copper Products by introducing a Tommie Copper TV Show to be hosted by Defendant Montel. The show was intended to introduce new products and features stories of individuals who use Tommie Copper Products.

101. In an announcement for the new show, Kallish again alluded to the pain he suffered after the accident, stating, "After the accident, I just wanted to have my life back; A life not dulled by prescription drugs, uncomfortable products or limited mobility."<sup>61</sup> Kallish's use of his personal story as a marketing tool is especially alluring to consumers on the hunt for benign pain relief treatment devoid of adverse side effects.

102. Separately, Defendant Montel also made misleading representations about Defendants' Products on his verified Twitter and Facebook accounts, endorsing Tommie Copper Products as pain management products:



<sup>61</sup> <http://web.archive.org/web/20130303050203/http://news.yahoo.com/tommie-copper-releases-latest-tv-show-pain-relief-201634866.html> (accessed by searching for <http://web.archive.org/web/20111105023609/http://www.tommiecopper.com/faq> in the Internet Archive index).



103. These claims formed the groundwork of Defendants' extensive marketing campaign to sell Tommie Copper Products as a "revolutionary breakthrough" in pain management and injury relief or repair and a slew of purportedly inflammation-related health conditions. Defendants' conduct is particularly egregious as it takes advantage of the anxieties of consumers and, particularly, individuals who suffer from pain or chronic pain on the hunt for pain relief treatment and the elderly who are particularly prone to joint pain issues such as arthritis.

**Defendants' Claims Concerning Benefits of Tommie Copper Products are False and Misleading**

104. Although Defendants have represented that the benefits of copper have been extolled for centuries and that copper has been shown to repair damaged tissue and reduce inflammation by binding with copper-deficient enzymes once absorbed in the skin, copper alone cannot be absorbed through the skin.<sup>62</sup>

105. Further, a deficiency in copper plays no role in the cause of rheumatoid arthritis.<sup>63</sup> Rather, copper deficiency is likely a symptom and a consequence of arthritis and inflammation, not a cause.<sup>64</sup>

106. Moreover, although copper is an essential trace element, critical for a variety of biological processes; for hemoglobin synthesis, enzyme activation, (i.e., superoxide dismutase), or more generally as a key component of mitochondrial, cytoplasmic, and nuclear enzyme

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<sup>62</sup> L.M. Gaetke and C.K. Chow, *Copper toxicity, oxidative stress, and antioxidant nutrients*, *Toxicology* 189: 147-63 (2003).

<sup>63</sup> <http://www.ncbi.nlm.nih.gov/pubmed/8353981/> (last visited July 31, 2015). Claims that copper supplements are effective in the treatment of arthritis have not been accepted by the medical community. <http://www.mayoclinic.org/drugs-supplements/copper-supplement-oral-route-parenteral-route/description/drg-20070120> (last visited July 31, 2015).

<sup>64</sup> <http://www.dailymail.co.uk/health/article-1221015/Copper-bracelet-arthritis-cure-myth-say-scientists-casting-doubt-multi-million-pound-alternative-healthcare-industry.html> (last visited July 31, 2015).

system, copper deficiency is extremely rare and most regular diets provide enough copper to meet the daily requirements.<sup>65</sup> Supplementation is only needed in patients with other serious medical conditions that affect their gastrointestinal tract and impair their ability to absorb nutrients. In reality, no modality of treatment has been shown to cure or reverse the changes of arthritis.

107. Moreover, to the extent that some Tommie Copper Products incorporate Zinc fiber, this serves antagonistic to copper, blocking copper absorption.<sup>66</sup>

108. Moreover, studies and clinical research established that Defendants' claims are affirmatively false and misleading. Telling is Defendant Kallish's Keynote speech in 2014, which eludes to the placebo effect.<sup>67</sup>

After my third operation I was living on pain medication ... I was reading about different technologies that might mitigate pain, and I came across copper ... through the aggregate knowledge of my past I was able to put copper into a yarn, make some products, and put them on the parts of my body that had pain. My whole motivation was to get off pain pills ... I used them, I put them on they really worked, and convinced they were a placebo, I didn't care. Because they worked.

109. Contrary to Defendants' representations regarding the miraculous healing powers of copper, clinical studies demonstrate that copper has been shown to be no better than a placebo for pain relief for patients with arthritis. One study showed that a copper-infused device does not improve joint swelling and tenderness, physical function, and inflammation.<sup>68</sup>

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<sup>65</sup> S.K. Chhetri, R.J. Mills, S. Shaunak, H.C. Emsley. *Copper deficiency*. BMJ. 348: 3691 (2014); K. Dembinski, A.E. Gargasz, S. Dabrow, L. Rodriguez. *Three distinct cases of copper deficiency in hospitalized pediatric patients*. Clin Pediatr (Phila). 51: 759-62 (2012).

<sup>66</sup> M. Torre, A.R. Rodriguez, F. Saura-Calixto, *Effects of dietary fiber and phytic acid on mineral availability*. Crit. Rev. Food Sci. Nutr. 3D(1):1-22 (1991).

<sup>67</sup> <https://www.youtube.com/watch?v=8GdxhplDyc> (last visited July 31, 2015).

<sup>68</sup> S.J. Richmond, S. Gunadasa, M. Bland, H. MacPherson, *Copper Bracelets and Magnetic Wrist Straps for Rheumatoid Arthritis – Analgesic and Anti-Inflammatory Effects: A*

110. Stewart Richmond, of York University, who led the trial, has stated: “It appears that any perceived benefit obtained from wearing a ... or copper bracelet can be attributed to psychological placebo effects.” Moreover, he added, “I realize this may dispel the myth and puncture a few balloons, but I don’t want to see people wasting their money.”<sup>69</sup>

111. Further, Eric Matteson, M.D., chair of rheumatology at the Mayo Clinic, in Rochester, Minn., called the study “very good evidence about their lack of efficacy.”<sup>70</sup>

112. Jane Tadman from Arthritis Research U.K. has stated that she was not surprised by the study’s results. “Copper bracelets and other devices such as copper insoles are heavily marketed towards people with both rheumatoid arthritis and osteoarthritis on a purely anecdotal basis and without any evidence that they actually work, and this study confirms this lack of effectiveness.”<sup>71</sup>

113. Similarly, a 2009 study found that the “[u]se of a copper bracelet over a period of 4 weeks had no demonstrable therapeutic benefit for patients with osteoarthritis.”<sup>72</sup>

114. Further, a randomized double blind placebo controlled trial of Copper-Salicylate gel, which was directly applied to the skin, was no better than a placebo gel as a pain reliever or

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*Randomized Double-Blind Placebo Controlled Crossover Trial*, PLoS ONE 8(9) e71529 (2013), available at Doi:10.1371/journal.pone.0071529, available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0071529> (last visited July 31, 2015).

<sup>69</sup> <http://www.dailymail.co.uk/health/article-1221015/Copper-bracelet-arthritis-cure-myth-say-scientists-casting-doubt-multi-million-pound-alternative-healthcare-industry.html> (last visited July 31, 2015).

<sup>70</sup> <http://www.arthritis.org/living-with-arthritis/treatments/natural/other-therapies/magnetic-copper-bracelets.php> (last visited July 31, 2015).

<sup>71</sup> <http://www.webmd.com/rheumatoid-arthritis/news/20130918/copper-bracelets-rheumatoid-arthritis> (last visited July 31, 2015).

<sup>72</sup> S.J. Richmond, S.R. Brown, P.D. Campion, *et al. Therapeutic effects of magnetic and copper bracelets in osteoarthritis: a randomised placebo-controlled crossover trial*. *Complementary Therapies in Medicine*. 17(5–6):249–256 (2009).

providing pain relief for patients with osteoarthritis of the hip and knee.<sup>73</sup>

115. Moreover, the U.S. Food & Drug Administration has chastised the sale of similar type products, including copper bracelets as arthritis remedies noting such conduct constitutes a “health fraud scam,” is not likely to help, and “waste[s] money and can lead to serious delays in getting proper diagnosis and treatment...”<sup>74</sup>

116. Lastly, another study showed that wearing compression shorts during recovery from high intensity exercise “does not lead to greater delivery of energy substrates or enhanced glucose uptake when compared to non-compression clothing.”<sup>75</sup>

117. Moreover, Defendant Montel’s other public statements dispel the veracity of his account that Tommie Copper Products help him cope with the pain of MS. For example, Defendant Montel recently gave an interview on April 13, 2015 on the Doctor Oz discussing his life with MS. During that interview, Montel indicated he utilized various mental techniques to manage his pain.<sup>76</sup>

118. In another interview, Montel indicated that he deals with pain by taking 60 forms of supplements and hormonal replacements every day, liquefies 60 percent of his daily intake, and is part of a double blind study medical test at the University of Wisconsin.

119. In another interview, Montel discusses utilizing prescription medication and

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<sup>73</sup> N. Schackel, R.O. Day, B. Kellet, *Copper-salicylate gel for pain relief in osteoarthritis: a randomized controlled trial*, Med. J. of Austl. 167:134-36 (1997), available at <http://espace.library.uq.edu.au/view/UQ:10099/copper.pdf> (last visited July 31, 2015).

<sup>74</sup> <http://www.fda.gov/downloads/ForConsumers/ProtectYourself/HealthFraud/UCM302359.pdf> (last visited July 31, 2015).

<sup>75</sup> B. Sperlich, D-P Born, K. Kaskinoro, K.K. Kalliokoski, M.S. Laaksonen, *Squeezing the Muscle: Compression Clothing and Muscle Metabolism during Recovery from High Intensity Exercise*, PLoS One 8(4): e60923 (2013), available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0060923> (last visited July 31, 2015).

<sup>76</sup> <http://www.doctoroz.com/episode/montel-williams-how-he-defied-odds-and-how-you-can-too> (last visited July 31, 2015).

medicinal marijuana to help deal with his pain:<sup>77</sup>

Since my diagnosis, I have been prescribed almost every pain pill available. I have taken OxyContin, I've taken Percocet, Ultracet, Vicodin, Lortab and the list goes on. To the point that at one point my digestive system was so messed up I had to do multiple cleanses just to get me going again. I now utilize, through a prescription I have in the state of California, medicinal marijuana and utilize it in an edible form about 40 minutes before I go to sleep, and it has reduced my night tremors about 60% and has reduced the pain in my feet from 20% to 40%, depending on the level of pain. On any given day on a scale of 1 to 10, I walk around with my feet in a fire pit at a pain level of about 5. Medicinal marijuana can reduce that to about 3. Lortab or Vicodin can't even take the edge off.

120. In fact, Defendant Montel is encouraging the medical marijuana as recently as June of this year, writing an op-ed published on Pennlive calling on House lawmakers to pass a medical marijuana bill.<sup>78</sup> In a dramatic speech he stated: "It wasn't until I started using medical cannabis on a daily basis and getting my system saturated with cannaboids that I started getting relief."<sup>79</sup>

121. Thus, any suggestion that Tommie Copper Products (which incorporates a proprietary copper infused thread) will relieve pain (including arthritis and other chronic joint and muscular pain), reduce inflammation, aid in injury management, accelerate or speed recovery, or improve in muscular power or strength are both false and misleading.

### **Plaintiffs' Purchases and Experiences with Defendants' Products**

#### **Plaintiff William Lucero**

122. Within the class period, Plaintiff Lucero purchased one of the Tommie Copper Products manufactured, marketed or sold by Defendants described and at issue in this

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<sup>77</sup> <http://www.medicinenet.com/script/main/art.asp?articlekey=53785> (last visited July 31, 2015).

<sup>78</sup> [http://www.pennlive.com/opinion/2015/06/with\\_medical\\_marijuana\\_bill\\_th.html#in\\_cart\\_river](http://www.pennlive.com/opinion/2015/06/with_medical_marijuana_bill_th.html#in_cart_river) (last visited July 31, 2015).

<sup>79</sup> <http://www.wpxi.com/news/news/state-regional/montel-williams-brought-tears-lobbying-medical-mar/nmbzD/> (last visited July 31, 2015).

Complaint, including: one elbow sleeve in or around 2014 for approximately \$20.00.

123. Mr. Lucero purchased the Tommie Copper Product from Walmart after viewing the various advertisements concerning the Tommie Copper Products, including commercials, and in-store advertisements referencing the ability to purportedly, among other benefits, relieve arthritis, and other chronic joint and muscular pain, aid in injury management, accelerate or speed recovery, and improve in muscular power, strength, and endurance, prior to the time of purchase and understood them as a representation and warranty by Defendants that the Tommie Copper Products were effective for those purposes. He relied on these representations and warranties in deciding to purchase the Tommie Copper Products, and these representations and warranties were part of the basis of the bargain, in that he would not have purchased the Tommie Copper Products if he had known that it was not in fact, proven to provide the aforementioned benefits. Plaintiff Lucero used the Tommie Copper Products as directed but did not experience any of the purported benefits such as pain relief, aiding in injury management, or acceleration in recovery, or improvement in muscular power, strength, and endurance. The Tommie Copper Product was useless to Plaintiff Lucero, who would not have purchased the Tommie Copper Products or would not have paid as much for the products had he known that they were not effective.

**Plaintiff Rhonda Boggs**

124. Within the class period, Plaintiff Boggs purchased one or more of Tommie Copper Products manufactured, marketed or sold by Defendants described and at issue in this Complaint, including: one knee sleeve in or around 2013 for approximately \$30.00; one pair of Capri bottoms in or around 2014 (approximately one year later) for approximately \$80.00; and one pair of socks in or around 2014 for approximately \$30.00 (approximately six months after her second purchase).

125. Ms. Boggs decided to purchase Tommie Copper Products from [www.TommieCopper.com](http://www.TommieCopper.com) after viewing the various advertisements concerning the Tommie Copper Products, including an infomercial that featured Defendant Montel and Defendant Kallish. After seeing the infomercials several times, she decided to go online and purchase the knee sleeve with a credit card. In the infomercial, Defendant Montel states “the benefits of copper have been extolled for centuries and athletes have used compression for decades to enhance performance”; “basically saved my life”; and “relief is an understatement.” Plaintiff Boggs viewed the infomercial, which references the ability of Tommie Copper Products to purportedly, among other benefits, relieve arthritis and other chronic joint and muscular pain, aid in injury management, accelerate or speed recovery, and improve in muscular power, strength, and endurance, prior to the time of purchase and understood them as a representation and warranty by Defendants that the Tommie Copper Products were effective for those purposes. She relied on these representations and warranties in deciding to purchase the Tommie Copper Products, and these representations and warranties were part of the basis of the bargain, in that she would not have purchased the Tommie Copper Products if she had known that it was not in fact proven to provide the aforementioned benefits. Plaintiff Boggs used the Tommie Copper Products as directed but did not experience any of the purported benefits such as pain relief, aiding in injury management, or acceleration in recovery, or improvement in muscular power, strength, and endurance. The Tommie Copper Products were useless to Plaintiff Boggs, who would not have purchased the Tommie Copper Products or would not have paid as much for the Products had she known that they were not effective.

**Plaintiff Jerome Jeffy**

126. Within the class period, Plaintiff Jeffy purchased one or more of Tommie Copper Products manufactured, marketed or sold by Defendants described and at issue in this



Complaint, including: one short sleeve shirt in or around 2015 for approximately \$50.00.

127. Mr. Jeffy purchased the product from a Kmart in Riverhead, New York after viewing the various advertisements concerning the Tommie Copper products, including infomercials featuring Defendant Montel and rodeo cowboy Shawn Minor referencing the ability to purportedly, among other benefits, relieve arthritis and other chronic joint and muscular pain, aid in injury management, accelerate or speed recovery, and improve in muscular power, strength, and endurance, prior to the time of purchase and understood them as a representation and warranty by Defendants that the Tommie Copper Products were effective for those purposes. He relied on these representations and warranties in deciding to purchase the Tommie Copper Products, and these representations and warranties were part of the basis of the bargain, in that he would not have purchased the Tommie Copper Products if he had known that it was not in fact, proven to provide the aforementioned benefits. Plaintiff Jeffy used the Tommie Copper Products as directed but did not experience any of the purported benefits such as pain relief, aiding in injury management, or accelerate in recovery, or improvement in muscular power, strength, and endurance. The Tommie Copper Products were useless to Plaintiff Jeffy, who would not have purchased the Tommie Copper Products or would not have paid as much for the products had he known that they were not effective.

**Plaintiff Sandy Kontura**

128. Within the class period, Plaintiff Kontura purchased one or more of Tommie Copper Products manufactured, marketed or sold by Defendants described and at issue in this Complaint, including: one long sleeve men's shirt in or around 2013 for approximately \$59.50; one women's pants in or around 2013 for approximately \$69.50; one men's pants in or around 2013 for approximately \$69.50; and three pairs of compression gloves in or around 2013 for approximately \$34.50 each.

129. Ms. Kontura purchased these from [www.tommiecopper.com](http://www.tommiecopper.com) after viewing the various advertisements concerning the Tommie Copper Products, including infomercials featuring Defendant Montel, reviews, blogs, and Defendants' website(s) referencing the ability to purportedly, among other benefits, relieve arthritis and other chronic joint and muscular pain, aid in injury management, accelerate or speed recovery, and improve in muscular power, strength, and endurance, prior to the time of purchase and understood them as a representation and warranty by Defendants that the Tommie Copper Products were effective for those purposes. She relied on these representations and warranties in deciding to purchase the Tommie Copper Products, and these representations and warranties were part of the basis of the bargain, in that she would not have purchased the Tommie Copper Products if she had known that it was not in fact, proven to provide the aforementioned benefits. Plaintiff Kontura used the Tommie Copper Products as directed but did not experience any the purported benefits such as pain relief, aiding in injury management, or accelerate in recovery, or improvement in muscular power, strength, and endurance. The Tommie Copper Products were useless to Plaintiff Kontura, who would not have purchased the Tommie Copper Products or would not have paid as much for the products had she known that they were not effective.

130. Based on information and belief, Defendants knew the advertised benefits of Tommie Copper Products were both false and misleading. Specifically, Defendants knew or should have known that its copper infused Tommie Copper Products did not and could not provide any health benefits as represented.

131. By contrast, Plaintiffs did not know, and had no reason to know, that Tommie Copper Products were falsely marketed and sold.

132. Prior to filing this action, Plaintiffs, by and through their counsel, provided Defendants with written notice of their claims pursuant to 15 U.S.C. § 2310(e) and any laws

requiring pre-suit demand and notice.

**Defendants' False and Misleading Claims are Material**

133. The representations at issue are ubiquitous. In commercial videos and/or infomercials, in retail stores, on their respective internet websites, and on Defendants' websites, Defendants make the same representations about Tommie Copper Products, namely that the Products relieve pain, including that from arthritis and other chronic joint and muscular pain, aid in injury management and/or repair injured tissue, accelerate or speed recovery, neutralize "free-radicals" and improve in muscular power, strength, and endurance.

134. All of Defendants' claims challenged herein relate to matters that are material and important to a consumer's purchasing decision, as they concern core claims about the product which are likely to and did influence consumers' purchase of Tommie Copper Products.

135. Defendants' marketing, advertising, and packaging materials intended to, and did, induce Plaintiffs and Class Members to rely upon Defendants' representations that Tommie Copper Products were effective for its intended use and in the way described. These representations were a substantial factor in causing Plaintiff and Class Members to purchase Tommie Copper Products over other effective pain relievers.

136. At the time Plaintiffs and Class Members purchased the Tommie Copper Products, they were unaware of the fact that: (1) Defendants' claims that Tommie Copper Products relieve pain, including that from arthritis and other chronic joint and muscular pain, aid in injury management and/or repair injured tissue, accelerate or speed recovery, neutralize "free-radicals" and improve in muscular power, strength, and endurance were false and misleading; and (2) Tommie Copper Products are not proven effective for their intended use.

137. If Plaintiffs and Class Members had been aware of the true facts concerning Tommie Copper Products, Plaintiffs and Class Members would not have purchased the

Products. Plaintiffs and members of the Class have been injured in fact and have suffered out of pocket losses. Plaintiffs and members of the Class therefore seek a refund and/or rescission of the transaction and all further equitable and injunctive relief as provided by applicable law.

### **CLASS ACTION ALLEGATIONS**

138. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek to represent a nationwide class (the “Nationwide Class”), of all persons in the United States who purchase Tommie Copper Products. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Jeffy also seeks to represent a sub-class of all Class members who purchased Tommie Copper Products in New York (the “New York Sub-Class”).

139. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Lucero also seeks to represent a sub-class of all Class members who purchased Tommie Copper Products in California (the “California Sub-Class”).

140. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Kontura also seeks to represent a sub-class of all Class members who purchased Tommie Copper Products in Ohio (the “Ohio Sub-Class”).

141. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Boggs also seeks to represent a sub-class of all Class members who purchased Tommie Copper Products in Georgia (the “Georgia Sub-Class”).

142. The classes described in this Complaint will be jointly referred to as “Class,” and proposed members in the classes will be jointly referred to as “Class Members.”

143. Plaintiffs reserve the right to amend or modify Class definition with greater specificity or further division into subclasses or limitation to particular issues as discovery and the orders of this Court warrant.

144. Excluded from the Class are: (i) Defendants and their employees, principals,

affiliated entities, legal representatives, successors and assigns; (ii) any entity in which Defendants have a controlling interest, and Defendants' legal representatives; and (iii) the judges to whom this action is assigned and any members of their immediate families

145. The Court can define the Class and create additional subclasses as may be necessary or desirable to adjudicate common issues and claims of the Class members if, based on discovery of additional facts, the need arises.

146. The members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiffs at this time but will be determined through discovery. Upon information and belief and based upon the scope of Defendants' marketing campaign, the Class includes tens of thousands of members. Accordingly, joinder is impracticable.

147. There are numerous questions of law and fact common to the Class which predominate over any individual actions or issues, including, but not limited to:

- a. Whether Defendants violated the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*;
- b. Whether Defendants breached any express warranties made to Plaintiffs and the Class;
- c. Whether Defendants breached an implied warranty of merchantability made to Plaintiffs and the Class;
- d. Whether Defendants were unjustly enriched by its conduct;
- e. Whether Defendants engaged, and continue to engage, in unfair or deceptive acts and practices in connection with the marketing, advertising, and sales of Tommie Copper Products;
- f. Whether Defendants violated other consumer protection statutes, false

advertising statutes, or state deceptive business practices statutes; and

- g. Whether, as a result of Defendants' misconduct as alleged herein, Plaintiffs and Class Members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

148. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs and Class Members were exposed to Defendants' false, misleading, and deceptive marketing concerning Tommie Copper Products and were subject to Defendants' unjust, unreasonable, and unlawful practices. Plaintiffs have no interests antagonistic to the interests of other members of the Class.

149. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of Class Members they seek to represent, they have retained counsels competent and experienced in prosecuting class actions, and they intend to prosecute this action vigorously.

150. Plaintiffs will fairly and adequately represent and protect the interests of Class Members and common issues predominate.

151. Notice of this class action can be provided to Class Members by techniques and forms similar to those customarily used in other class actions, such as by published notice, Internet notice, first-class mail or a combination thereof, or other means deemed suitable for this Class.

152. Class certification is appropriate because Defendants have acted, or refused to act, on grounds generally applicable to the Class, making class-wide relief appropriate.

153. In addition, the class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and Class Members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized

litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **(Magnuson-Moss Warranty Act 15 U.S.C. §§ 2301, *et seq.*)**

154. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

155. Plaintiffs bring Count I individually and on behalf of members of the Nationwide Class and Sub-Classes against Defendants.

156. The amounts in controversy of Plaintiff's claims are at least or more than the sum or value of twenty-five (\$25) dollars.

157. Defendants' Products are consumer products as defined in 15 U.S.C. § 2301(1).

158. At all relevant times, Defendants are supplier(s) and warrantor(s) as defined in 15 U.S.C. § 2301 (4) and (5).

159. In connection with the sale of Tommie Copper Products, Defendants' written warranties as defined in 15 U.S.C. §2301(6), warranted that the copper-infused Products can: (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance (collectively, the "Express Warranties" or



“Misrepresentations”).

160. In fact, Tommie Copper Products do not conform to the Express Warranties because each of the Express Warranties is false and misleading. Additionally, clinical studies discussed herein refute these warranties.

161. Additionally, Tommie Copper impliedly warranted, as defined in 15 U.S.C. § 2301(7), in connection with the sale of Tommie Copper Products that the Products were of merchantable quality.

162. Defendants breached the warranty implied in the contract for the sale of Tommie Copper Products in that the Tommie Copper Products are not effective for providing pain relief, including arthritis and other chronic joint and muscular pain; do not aid in injury management and/or repair injured tissue; do not accelerate or speed recovery; and do not improve in muscular power, strength, and endurance. Thus, Tommie Copper Products could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose in that they are not generally recognized among qualified experts as safe and effective for the advertised purposes. Furthermore, the Tommie Copper Products do not conform to the promises or affirmations of fact made in the advertisements, packaging, and labeling of the Products. As a result, Plaintiffs and Class Members did not receive the goods as impliedly warranted by Defendants to be merchantable.

163. By reason of Defendants’ breach of their express and implied warranties, Defendants violated statutory rights owed to Plaintiffs and Class Members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiffs and Class Members.

164. Plaintiffs and Class Members were injured as a direct and proximate result of

Defendants' breaches because they would not have purchased or paid as much for Tommie Copper Products if the true facts had been known.

165. Prior to filing this action, Plaintiffs, by and through their counsels, provided Defendants with written notice of their claims pursuant to 15 U.S.C. § 2301(e).

**COUNT II**  
**(Negligent Misrepresentation)**

166. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

167. Plaintiffs bring Count II individually and on behalf of members of the Nationwide Class and Sub-Classes against Defendants.

168. Defendants had a duty to disclose to Plaintiffs and Class Members correct information as to the quality and characteristics of Tommie Copper Products because Defendants were in a superior position than Plaintiffs and Class Members such that reliance by Plaintiffs and Class Members were justified. As the designer, manufacturer, marketer, distributor, or seller of Tommie Copper Products, Defendants possessed the skills and expertise to know the type of information that would influence a consumer's purchasing decision.

169. During the applicable Class period, Defendants negligently or carelessly misrepresented, omitted, and concealed from consumers material facts regarding the quality and characteristics of Tommie Copper Products, including the alleged benefits from the copper-infused fabric. Defendants made such false and misleading statements and omissions through a wide range of advertisement medium described herein, with the intent to induce Plaintiffs and Class Members to purchase Tommie Copper Products.

170. Defendants were careless in ascertaining the truth of its representations in that they knew or should have known that Plaintiffs and Class Members would not realize the

alleged benefits represented by Defendants.

171. Plaintiffs and Class Members were unaware of the falsity in Defendants' misrepresentations and omissions and, as a result, justifiably relied on them when making the decision to purchase Tommie Copper Products. Plaintiffs and Class Members would not have purchased Tommie Copper Products or paid as much for Tommie Copper Products if the true facts had been known.

**COUNT III  
(Unjust Enrichment)**

172. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

173. Plaintiffs bring Count III individually and on behalf of members of the Nationwide Class and Sub-Classes against Defendants.

174. At all relevant times during the applicable Class period, Defendants designed, manufactured, produced, marketed, or sold Tommie Copper Products.

175. Defendants directly benefitted at the expense of Plaintiffs and Class Members who paid for Tommie Copper Products as a result of Defendants' deceptive, fraudulent, and misleading advertising, marketing, and sales of the copper-infused Products.

176. Plaintiffs and Class Members conferred non-gratuitous benefits upon Defendants by buying and paying the purchase price for Tommie Copper Products directly to Defendants. Defendants accepted or retained such non-gratuitous benefits with full knowledge that Plaintiffs and Class Members were not receiving products of the nature and quality that Defendants represented.

177. By virtue of the unlawful conduct described herein, it would be unjust and inequitable for Defendants to retain the non-gratuitous benefits conferred. Therefore, Plaintiffs

and Class Members are entitled to, and hereby seek, disgorgement and restitution of wrongful profits, revenue, and benefits conferred upon Defendants in a manner established by the Court

**CALIFORNIA**

**COUNT IV**

**(Breach of Express Warranty, Cal. Com. Code § 2313)**

178. Plaintiff Lucero and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

179. Plaintiff Lucero brings Count IV individually and on behalf of members of the California Sub-Class against Defendants.

180. By making the Express Warranties, Defendants, as a manufacturer, marketer, distributor or seller, expressly warranted that Tommie Copper Products were fit for their intended purpose by making the Express Warranties.

181. The foregoing representations were material because they concerned alleged efficacy of Tommie Copper Products regarding the ability to provide pain relief, aid in injury management and/or repair injured tissue; accelerate or speed recovery; and improve muscular power, strength, and endurance. These representations had an influence on consumers' decisions in purchasing Tommie Copper Products.

182. Defendants made the above representations to induce Plaintiff Lucero and members of the California Sub-Class to purchase Tommie Copper Products. Plaintiff Lucero and the California Sub-Class members relied on the representations when purchasing Defendants' products.

183. In fact, Tommie Copper Products do not conform to the above express representations because each of the Express Warranties is false and misleading.

184. Plaintiff Lucero and the California Sub-Class members were injured and

continued to be injured as a direct and proximate result of Defendants' breach because they would not have purchased Tommie Copper Products or paid as much for Tommie Copper Products if the true facts had been known.<sup>80</sup>

**COUNT V**  
**(Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2313)**

185. Plaintiff Lucero and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

186. Plaintiff Lucero brings Count V individually and on behalf of members of the California Sub-Class against Defendants.

187. Defendants, as the designer, manufacturer, marketer, distributor, or seller, impliedly warranted that Tommie Copper Products were fit for their intended purpose in that the Products would (i) relieve pain, including arthritis and other chronic joint and muscular pain;(ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance. Defendants did so with the intent to induce Plaintiffs and Class Members to purchase Tommie Copper Products.

188. Defendants breached the warranties implied in the contract for the sale of Tommie Copper Products in that Tommie Copper Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, and the goods were unfit for their intended and ordinary purpose. As a result, Plaintiffs and California Sub-class members did not receive the goods as impliedly warranted by Defendants to be merchantable.

189. In reliance upon Defendants' skill and judgment and the implied warranties of

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<sup>80</sup> Though, Plaintiff Lucero would still be interested in purchasing Tommie Copper Products in the future if these products were represented properly or truthfully.

fitness for the purpose, Plaintiff Lucero and the Sub-class members purchased Tommie Copper Products to relieve aches and pains, aid in injury management and/or repair injured tissue, accelerate or speed recovery and improve in muscular power, strength, and endurance.

190. Neither Plaintiff Lucero nor the California Sub-Class members altered Defendants' Products after purchase.

191. Plaintiff Lucero and the California Sub-Class members were injured as a direct and proximate result of Defendants' breach because they would not have purchased Tommie Copper Products or paid as much for Tommie Copper Products if the true facts had been known.

**COUNT VI**  
**(Consumers Legal Remedies Act, Calif. Civil Code §§ 1750, *et seq.*)**

192. Plaintiff Lucero and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

193. Plaintiff Lucero brings Count VI individually and on behalf of members of the California Sub-Class against Defendants.

194. This cause of action is brought pursuant to the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §§ 1750, *et seq.* Plaintiff Lucero is a consumer under California Civil Code §1761(d); Tommie Copper Products are goods within the meaning of the Act.

195. Prior to filing this action, Plaintiff Lucero purchased one or more Tommie Copper Products for personal use.

196. Defendants violated and continue to violate the CLRA by engaging in the following practices proscribed by California Civil Code §1770(a) in its transactions with Plaintiff Lucero and Class Members which were intended to result in, and did result in, the sale of Tommie Copper Products.

197. CLRA § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” Defendants violated this provision by making the Misrepresentations.

198. CLRA § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” Defendants violated this provision by making the Misrepresentations

199. CLRA § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” Defendants violated this provision by making the Misrepresentations.

200. CLRA § 1770(a)(14) prohibits “[r]epresenting that a transaction confers or involves rights, remedies, or obligations which it does not have or involve.” Defendants violated this provision by making the Misrepresentation

201. CLRA § 1770(a)(16) prohibits “[r]epresenting the subject of a transaction has been supplied in accordance with a previous representation when it has not.” Defendants violated this provision by making the Misrepresentations.

202. Defendants violated the CLRA by making false or deceptive or misleading representations about its Tommie Copper Products as described above, when they knew, or should have known, that the representations and advertisements were false or misleading.

203. Plaintiff Lucero and California Sub-Class members reasonably relied upon Defendants’ representations regarding the qualities and attributes of Tommie Copper Products.

204. Plaintiff Lucero and California Sub-Class members were deceived by Defendants’ representations as to the qualities and attributes of Tommie Copper Products, including but not limited to the Misrepresentations. Plaintiff Lucero and Sub-Class members would not have purchased Tommie Copper Products or paid as much for the Products had they



known the true nature of these products. Though, Plaintiff Lucero and Sub-Class members would still be interested in purchasing Tommie Copper Products in the future if these products were represented properly or truthfully.

205. Plaintiff Lucero and California Sub-Class members seek an order of this Court awarding Plaintiff Lucero and proposed Class Members prospective and retrospective injunctive relief, and attorneys' fees and costs as allowed by statute. Plaintiff Lucero and Class Members are not seeking damages or punitive damages at this time for their CLRA claim; Plaintiff Lucero and Class Members will seek leave to amend the Complaint 30 days after providing formal notice to Defendants of its intention to seek damages and punitive damages.

206. In addition, the CLRA has enhanced penalties for acts perpetrated against senior citizens and disabled persons. If the defendant's conduct is directed at a class of persons who are senior citizens and/or disabled, a \$5,000.00 civil penalty may be awarded to "each class member." Cal. Civ. Code § 1780(b). A "disabled person" is someone who has "physical or mental impairment which substantially limits one of more major life activities." Cal. Civ. Code § 1761(f), (g). Under California law, individuals suffering from arthritis are "disabled." Defendants' conduct is clearly directed at senior citizens, who are the primary demographic afflicted with arthritis, as Tommie Copper Products are intended to treat and/or alleviate arthritis. Accordingly, the Court may award a civil penalty of up to \$5,000.00 for each Class Member.

## **COUNT VII**

### **(False Advertising Law, Calif. Business & Professions Code §§ 17500 et seq.)**

207. Plaintiff Lucero and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

208. Plaintiff Lucero brings Count VII individually and on behalf of members of the

California Sub-Class against Defendants.

209. Plaintiff Lucero has standing to pursue this claim because he suffered injury in fact as a result of Defendants' actions as forth herein. Prior to filing this action, Plaintiff Lucero purchased Tommie Copper Products in reliance upon Defendants' advertising or marketing claims.

210. Defendants' business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising under California Business and Professions Code section 17500, *et seq.* (the "Code") because Defendants advertise Tommie Copper Products in a manner that is untrue and misleading, and that Defendants knew or reasonably should have known its advertisement to be untrue or misleading. In fact, Defendants' Products fail to perform or conform as advertised because copper-infused products do not relieve pain, including arthritis and other chronic joint and muscular pain; do not aid in injury management and/or repair injured tissue; do not accelerate or speed recovery; and do not improve in muscular power, strength, and endurance.

211. Defendants' wrongful business practices caused injury to Plaintiff Lucero and California Sub-Class members.

212. California's False Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

213. Defendants committed acts of false advertising, as defined by § 17500, by

making the Misrepresentations.

214. Defendants knew or should have known, through the exercise of reasonable care that the Misrepresentations were untrue and misleading.

215. Defendants' actions in violation of § 17500 were false and misleading such that the general public is and was likely to be deceived.

216. Plaintiffs, the Class and California Sub-Class members suffered lost money or property as a result of Defendants' FAL violations because they would not have purchased Tommie Copper Products if they knew the truth about the product.

217. Pursuant to Section 17535 of the Code, Plaintiff Lucero and the California Sub-Class members seek an order of this Court enjoining Defendants from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in the Complaint.

218. Plaintiff Lucero and the California Sub-Class also seek an order for disgorgement and restitution of all monies from sale of Tommie Copper Products, which were unjustly acquired through its wrongful business practice.

**COUNT VIII**  
**(Unfair Competition Law, §§ 17200 et seq.)**

219. Plaintiff Lucero and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

220. Plaintiff Lucero brings Count VIII individually and on behalf of members of the California Sub-Class against Defendants.

221. Defendants are subject to the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200 *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or

misleading advertising ....”

222. Defendants’ conduct, described herein, violated the “unlawful” prong of the UCL by violating the CLRA and FAL (*see infra* at Count VI and VII).

223. Defendants’ conduct, described herein, violated the “fraudulent” prong of the UCL by making the Misrepresentations.

224. Defendants’ acts, omissions, misrepresentations, practices, and non-disclosures as alleged herein constitute “unfair” business acts and practices under the UCL. Defendants’ conduct offends public policy against false advertising. Federal law states that an advertisement must be truthful, not misleading. Defendants’ conduct is also immoral, unethical, and unscrupulous because it seeks to capitalize on consumer’s desire for pain relief products through false and misleading representations. Thus, the injuries suffered by Plaintiff Lucero and the California Sub-Class members outweigh any conceivable benefit to consumers or competition that may derive from Defendants’ conduct.

225. Plaintiffs, the Class and California Sub-Class members suffered lost money or property as a result of Defendants’ UCL violations because they would not have purchased Tommie Copper Products if they knew the truth about the Products.

226. Plaintiff Lucero and the California Sub-Class members seek an order enjoining Defendants from continuing to conduct business through unlawful, unfair, or fraudulent acts and practices, and to commence a corrective advertising campaign.

## **GEORGIA**

### **COUNT IX**

#### **(Breach of Express Warranty, Ga. Code Ann. § 11-2-313)**

227. Plaintiff Boggs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

228. Plaintiff Boggs brings Count IX individually and on behalf of members of the Georgia Sub-Class against Defendants.

229. Defendants made affirmations of fact or promises regarding the efficacy of Tommie Copper Products concerning the ability to (i) relieve pain, including arthritis and other chronic joint and muscular pain;(ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance, all which became part of the basis of the bargain.

230. Pursuant to Official Code of Georgia Annotated § 11-2-313, an Express Warranty was formed regarding Tommie Copper Products.

231. Defendants' breach of their affirmations of fact or promise regarding Tommie Copper Products was a direct and proximate cause of Plaintiff Boggs and Georgia Sub-Class's injuries.<sup>81</sup>

**COUNT X**  
**(Breach of Implied Warranty, Ga. Code Ann. § 11-2-314)**

232. Plaintiff Boggs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

233. Plaintiff Boggs brings Count X individually and on behalf of members of the Georgia Sub-Class against Defendants.

234. Tommie Copper Products were subject to an implied warranty of merchantability under O.C.G.A. § 11-2-314, which was not excluded or modified.

235. Defendants, as the designer, manufacturer, marketer, distributor, or seller, impliedly warranted that Tommie Copper Products were fit for their intended purpose in that

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<sup>81</sup> Though, Plaintiff Boggs would still be interested in purchasing Tommie Copper Products in the future if these products were represented properly or truthfully.

that the Products would (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance. Defendants did so with the intent to induce Plaintiffs and Class Members to purchase Tommie Copper Products.

236. Defendants breached the warranties implied in the contract for the sale of Tommie Copper Products in that the Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, and the goods were unfit for their intended and ordinary purpose for which the Products are used. As a result, Plaintiff Boggs and members of the Georgia Sub-Class did not receive the goods as impliedly warranted by Defendants to be merchantable.

237. In reliance upon Defendants' skill and judgment and the implied warranties of fitness for the purpose, Plaintiff Boggs and members of the Georgia Sub-Class purchased Tommie Copper Products for use to (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance.

238. The Tommie Copper Products were not altered by Plaintiff Boggs or members of the Georgia Sub-Class.

239. Defendants' breach of the implied warranty of merchantability regarding Tommie Copper Products was a direct and proximate cause of Plaintiff Boggs and Georgia Sub-Class's injuries.

**COUNT XI**  
**(Fair Business Practices Act, Ga. Code Ann. § 10-1-393)**

240. Plaintiff Boggs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

241. Plaintiff Boggs brings Count XI individually and on behalf of members of the Georgia Sub-Class against Defendants.

242. Defendants had a statutory duty under Georgia law to refrain from unfair or deceptive acts or practices in the manufacture, promotion, and sale of Tommie Copper Products to consumers including Plaintiff and Sub-Class members.

243. As alleged in this Complaint, Defendants engaged and continue to engage in unfair and deceptive acts and practices in connection with the sale of Tommie Copper Products, including, without limitation, misrepresenting the benefits of Tommie Copper Products and their ability to (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance.

244. Selling Products that failed to perform or conform to Defendants' representations or descriptions of such Products.

245. The foregoing acts and practices were directed and continue to be directed at unsuspecting consumers.

246. Defendants violated and continue to violate statutory prohibition against engaging in unlawful acts and practices by, *inter alia*, representing to consumers that Tommie Copper Products (goods) have characteristics, uses, or benefits that they do not possess. Ga. Code § 10-1-393(b)(5). In fact, the Products fail to perform or conform as represented because copper-infused products have not proven to be effective by competent and reliable scientific evidence, to increase performance, muscle mobility or recovery or provide better pain relief.

247. Prior to filing this action, Plaintiff Boggs, by and through her counsel, provided Defendants with written notice of her claims.



**NEW YORK**

**COUNT XII**

**(Deceptive Acts or Practices, New York Gen. Bus. Law § 349)**

248. Plaintiff Jeffy and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

249. Plaintiff Jeffy brings Count XII individually and on behalf of members of the New York Sub-Class against Defendants.

250. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by making the Misrepresentations.

251. The foregoing deceptive acts and practices were directed at consumers.

252. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and ingredients of Tommie Copper Products to induce consumers to purchase the Products.

253. Plaintiff Jeffy and members of the New York Sub-Class were injured because they paid for the Tommie Copper Products which they would not have done had they known the truth about the Products.

254. Plaintiff Jeffy, on behalf of himself and other members of the New York Sub-Class, seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or \$50.00, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

**COUNT XIII**

**(False Advertising, New York Gen. Bus. Law § 350)**

255. Plaintiff Jeffy and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

256. Plaintiff Jeffy brings Count XIII individually and on behalf of members of the

New York Sub-Class against Defendants.

257. Based on the foregoing, Defendants have engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law.

258. Defendants' false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are directed to consumers.

259. Defendants' false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

260. Defendants' false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, have resulted in consumer injury or harm to the public interest.

261. As a result of Defendants' false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, Plaintiffs have suffered and continue to suffer economic injury.

262. Plaintiff Jeffy and the New York Sub-Class suffered an ascertainable loss caused by Defendants Misrepresentations because they paid for Tommie Copper Products, which they would not have done had they known the truth about the Products.

263. Plaintiff Jeffy, on behalf of himself and other members of the New York Sub-Class, seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or \$500.00, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

**COUNT XIV**  
**(Breach of Express Warranty, N.Y. U.C.C. § 2-313)**

264. Plaintiff Jeffy and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

265. Plaintiff Jeffy brings Count XIV individually and on behalf of members of the New York Sub-Class against Defendants.

266. Defendants are and were at all relevant times merchants under N.Y. U.C.C. § 2-313.

267. Defendants, as a manufacturer, marketer, distributor or seller, expressly warranted that Tommie Copper Products were fit for their intended purpose of making the Express Warranties.

268. In fact, Tommie Copper Products are not fit for such purposes because each of the Express Warranties is false and misleading.

269. Plaintiff Jeffy and the New York Sub-Class members were injured as a direct and proximate result of Defendants' breach of these warranties because they would not have purchased Tommie Copper Products if they knew the truth about the product.<sup>82</sup>

**COUNT XV**  
**(Breach of Implied Warranty of Merchantability, N.Y. U.C.C. § 2-314)**

270. Plaintiff Jeffy and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

271. Plaintiff Jeffy brings Count XV individually and on behalf of members of the New York Sub-Class against Defendants.

272. Defendants are and were at all relevant times, merchants under N.Y. U.C.C. § 2-

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<sup>82</sup> Though, Plaintiff Jeffy would still be interested in purchasing Tommie Copper Products in the future if these products were represented properly or truthfully.

313. Defendants, as the designer, manufacturer, marketer, distributor or seller, impliedly warranted that Tommie Copper Products were fit for their intended purpose in that that the Products would (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance. Defendants did so with the intent to induce Plaintiffs and Class Members to purchase Tommie Copper Products.

273. Defendants breached the warranty implied in the contract for the sale of Tommie Copper Products in that the Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, and the goods were unfit for their intended and ordinary purpose for which the Products are used. As a result, Plaintiff Jeffy and members of the New York Sub-Class did not receive the goods as impliedly warranted by Defendants to be merchantable.

274. In reliance upon Defendants' skill and judgment and the implied warranties of fitness for the purpose, Plaintiff Jeffy and members of the New York Sub-Class purchased Tommie Copper Products for use as a pain relief and/or injury management product to accelerate or speed recovery.

275. The Products were not altered by Plaintiff Jeffy or members of New York Sub-Class.

276. The Tommie Copper Products were unfit for their intended purpose, and Plaintiff Jeffy and members of New York Sub-Class did not receive the goods as warranted.

277. Defendants knew that Tommie Copper Products would be purchased and used without additional testing for efficacy by Plaintiff Jeffy and members of New York Sub-Class.

278. Plaintiff Jeffy and Sub-class have been injured and harmed as a direct and proximate result of Defendants' breach of the implied warranty because they would not have

Tommie Copper Products if they knew the truth about the product.

**COUNT XVI**  
**(Breach of Contract/Common Law Warranty)**

279. Plaintiff Jeffy and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

280. Plaintiff Jeffy brings this Count XVI individually and on behalf of the members of the New York Sub-Class against Defendants.

281. To the extent Defendants' commitment is deemed not to be a warranty under New York's Uniform Commercial Code, Plaintiff Jeffy and members of the New York Sub-Class plead in the alternative under common law warranty and contract law.

282. Defendants breached this warranty or contract obligation by warranting that Tommie Copper Products were fit for their intended purpose in that they would (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance.

283. As a direct and proximate cause of Defendants' breach of contract or implied warranty, Plaintiff Jeffy and the Class and New York Sub-Class members have been injured and harmed because they would not have purchased Tommie Copper Products if they knew the truth about the product.

**OHIO**

**COUNT XVII**  
**(Breach of Warranty, O.R.C. § 1302.26)**

284. Plaintiff Kontura and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follow:

285. Plaintiff Kontura brings Count XVII individually and on behalf of members of the Ohio Sub-Class against Defendants.

286. In fact, Tommie Copper Products are not fit for such purposes because each of the Express Warranties is false and misleading.

287. Defendants, as a manufacturer, marketer, distributor or seller, expressly and uniformly warranted that Tommie Copper Products were fit for their intended purpose of making the Express Warranties.

288. In fact, Tommie Copper Products are not fit for such purposes because each of the Express Warranties is false and misleading.

289. Plaintiff Kontura and the Ohio Sub-Class members were injured as a direct and proximate result of Defendants' breach of these warranties because they would not have purchased Tommie Copper Products if they knew the truth about the product.

290. Defendants received sufficient and timely notice of the breaches of warranty. Plaintiff Kontura and Ohio Sub-Class have given Defendants a reasonable opportunity to cure their failures with respect to their warranty, but Defendants have not done so.

291. Plaintiff Kontura and other members of the Ohio Sub-Class have been damaged as a direct and proximate result of Defendants' breach of their Express Warranties alleged in this Complaint because they would not have purchased the Tommie Copper Products if they knew the truth about the Products.<sup>83</sup>

**COUNT XVIII**  
**(Breach of Implied Warranty of Merchantability, O.R.C. § 1302.27)**

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<sup>83</sup> Though, Plaintiff Kontura would still be interested in purchasing Tommie Copper Products in the future if these products were represented properly or truthfully.

292. Plaintiff Kontura and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

293. Plaintiff Kontura brings Count XVIII individually and on behalf of members of the Ohio Sub-Class against Defendants.

294. Defendants, as the designer, manufacturer, marketer, distributor, or seller, impliedly warranted that Tommie Copper Products were fit for their intended purpose in that copper-infused and “copper and zinc-infused” products would effectively (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance. Defendants did so with the intent to induce Plaintiff Kontura and members of the Ohio Sub-Class to purchase Tommie Copper Products.

295. Defendants breached the warranties implied in the contract for the sale of Tommie Copper Products in that the Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, and the goods were unfit for their intended and ordinary purpose for which the Products are used. As a result, Plaintiff Kontura and members of the Ohio Sub-Class did not receive the goods as impliedly warranted by Defendants to be merchantable.

296. In reliance upon Defendants’ skill and judgment and the implied warranties of fitness for the purpose, Plaintiff Kontura and members of the Ohio Sub-Class purchased Tommie Copper Products for use to (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance.

297. Defendants’ breach of the implied warranty of merchantability regarding Tommie Copper Products was a direct and proximate cause of Plaintiff Boggs and members of



the Ohio Sub-Class's injuries.

**COUNT XIX**  
**(Ohio Consumer Sales Practices Act, ORC §§ 1345, *et seq.*)**

298. Plaintiff Kontura and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

299. Plaintiff Kontura brings Count XIX individually and on behalf of members of the Ohio Sub-Class against Defendants.

300. This cause of action is brought pursuant to the Ohio Consumer Sales Practices Act (the "CSPA"), ORC §§ 1345, *et seq.* Plaintiff Kontura is a consumer under ORC § 1345.01(D) who purchased Tommie Copper Products for personal, family, and/or household use. Therefore, the purchases of Tommie Copper Products by Plaintiff Kontura and members of the Ohio Sub-Class are "consumer transactions" as that term is defined in O. R. C. § 1345.01 (A).

301. As described herein, Defendants purposefully undertook a national media campaign to promote Tommie Copper Products thereby soliciting consumer transactions for those products on a nationwide basis. As a result, Defendants are a "supplier" covered by the Ohio Consumer Sales Practices Act which applies to all persons "engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer." O.R.C. § 1345.01(C).

302. Plaintiff Kontura has standing to pursue this claim because she suffered injury in fact as a result of Defendants' actions set forth herein. Prior to filing this action, Plaintiff Kontura purchased Tommie Copper Products for personal use in reliance upon Defendants' false and misleading marketing claims.

303. Defendants engaged in a uniform marketing and advertising campaign to solicit

sales of Tommie Copper Products during the course of their business conduct.

**Unfair and Deceptive Acts or Practices**

304. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, ORC § 1345.02(A) and ORC § 1345.02(B)(1), by representing that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that it does not have.

305. Defendants committed unfair and deceptive acts or practices in violation of the CSPA by representing that Tommie Copper Products can: (i) relieve pain, including arthritis and other chronic joint and muscular pain; (ii) aid in injury management and/or repair injured tissue; (iii) accelerate or speed recovery; and (iv) improve in muscular power, strength, and endurance.

306. Such acts or practices have been previously determined by Ohio Courts to violate the CSPA. Defendants committed said violations after such decisions were available for public inspection pursuant to ORC 1345.05(A)(3).

307. Plaintiff Kontura and Ohio Sub-Class Members seek damages, rescission, declaratory judgment, or injunction against Defendants' unfair and deceptive acts or practices that violates the CSPA.

**Unconscionable Acts or Practices**

308. In the alternative, Defendants committed unconscionable acts or practices in violation of the CSPA, ORC § 1345.03(A) as set forth in ORC § 1345.03(B)(1), by entering into a consumer transaction when the supplier knew, at the time the consumer transaction was entered into, of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction.

309. Defendants committed unconscionable acts or practices in violation of the CSPA, ORC § 1345.03(A) as set forth in ORC § 1345.03(B)(1), by entering into a consumer

transaction when Defendants knowingly made misleading statements of opinion on which the consumer was likely to rely on to the consumers' detriment.

310. Such acts or practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violations after such decisions were available for public inspection pursuant to ORC 1345.05(A)(3).

311. Plaintiff Kontura and Ohio Sub-Class Members seek damages, rescission, declaratory judgment, or injunction against Defendants' unconscionable acts or practices that violates the CSPA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Class Members request that the Court enter an order or judgment against Defendants including the following:

- A. An order certifying that this action is properly brought and may be maintained as a class action;
- B. An order appointing Plaintiffs as class representatives of the Nationwide Class, as class representative of their respective Sub-Classes, and Faruqi & Faruqi, LLP and The Law Office of Ronald A. Marron as co-counsels for the Class;
- C. An order requiring Defendants to bear the costs of Class notice;
- D. Restitution in such amount that Plaintiffs and Class Members paid to purchase Defendants' Tommie Copper Products;
- E. Actual damages, compensatory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
- F. Statutory damages allowable under New York Gen. Bus. Law §§ 349 and 350-e.
- G. Other appropriate injunctive relief;

H. An order declaring Defendants' conduct as unlawful, and an order enjoining Defendants from unlawfully and misleadingly representing Tommie Copper Products in violation of state law;

I. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and pre- and post-judgment interest on such monetary relief;

J. An order requiring an accounting for, and imposition of, a constructive trust upon all monies Defendants received as a result of the misleading, fraudulent, and unlawful conduct alleged herein.

K. Such other relief to which Plaintiffs and Class Members may be entitled to at law or in equity.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all causes of action or issues so triable.

DATED: July 31, 2015

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