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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 RICKY WISDOM, individually and on)
behalf of similarly situated individuals,)
14)
15 Plaintiff,)
16 v.)

17 EASTON DIAMOND SPORTS, LLC,)
18 a Delaware limited liability company,)
19 Defendant.)

Case No. 2:18-cv-04078-DSF-SS

) **FIRST AMENDED CLASS**
) **ACTION COMPLAINT FOR**
) **DAMAGES & INJUNCTIVE**
) **RELIEF**

-) **1. Unfair Business Practices in**
-) **Violation of California Business**
-) **& Professions § 17200, et seq.**
-) **2. False Advertising in Violation**
-) **of California Business and**
-) **Professions § 17500, et seq.**
-) **3. Breach of Express Warranty**
-) **4. Breach of Implied Warranty**
-) **5. Unjust Enrichment**
-) **6. Violation of Magnuson-Moss**
-) **Warranty Act, 15 U.S.C. §**
-) **2301, et seq.**

) DEMAND FOR JURY TRIAL

1 that were falsely labeled and advertised as being lighter than they actually are. On
2 his own behalf and on behalf of a proposed class defined below, Plaintiff seeks an
3 injunction prohibiting Defendant from selling falsely labeled and advertised youth
4 baseball bats as described herein, and an award of actual damages to the members
5 of the class, together with costs and reasonable attorneys' fees.

6 **JURISDICTION AND VENUE**

7 6. This Court has subject matter jurisdiction over this matter pursuant to
8 the Class Action Fairness Act, 28 U.S.C. § 1332(d) *et seq.*, because this case is a
9 class action in which the matter in controversy exceeds the sum or value of
10 \$5,000,000, exclusive of interest and costs; there are greater than 100 putative class
11 members; at least one putative class member is a citizen of a state other than
12 Defendant's states of citizenship; and none of the exceptions under subsection
13 1332(d) apply to the instant action.

14 7. This Court may assert general personal jurisdiction over Defendant,
15 because Defendant is headquartered in California, and because Defendant is
16 registered to do business in California.

17 8. Venue is proper in this District under 28 U.S.C. § 1391(b) because
18 Defendant resides in this District.

19 **PARTIES**

20 9. Plaintiff, Ricky Wisdom, is a natural person and a resident of the State
21 of Alabama.

22 10. Defendant, Easton Diamond Sports, LLC, is a Delaware limited
23 liability company headquartered in Thousand Oaks, California and registered to do
24 business in California.

25 11. Easton manufactures, advertises, and sells sporting goods equipment,
26 including the youth baseball bats at issue in this suit, online and through retail stores
27 located in Alabama, California, and elsewhere throughout the country.

1 12. During the period relevant to this lawsuit, Easton controlled the
2 manufacture, design, testing, packaging, labeling, assembly, marketing, advertising,
3 promotion, distribution, and selling of Easton bats—including quality control
4 measures regarding the bats’ weight and how the bats’ weight is displayed on
5 labeling and in advertising—from its headquarters located in Thousand Oaks,
6 California.

7 13. The deceptive and unfair practices alleged herein originated from and
8 were conceived, reviewed, approved and otherwise controlled from Easton’s
9 headquarters and executive offices in Thousand Oaks, California.

10 **COMMON ALLEGATIONS OF FACT**

11 **Background**

12 14. Easton is one of the largest manufacturers of sporting goods equipment
13 in the country.

14 15. Some of Easton’s most common and popular sports products are youth
15 baseball bats. Easton manufactures, sells, and distributes a number of different types
16 of baseball bats under various Easton brands.

17 16. Easton’s bats are among the most high-end, premium youth baseball
18 bats on the market, with the more expensive models retailing for over \$350.00 each.
19 Among baseball players, “Easton” baseball bats are widely known as upscale
20 baseball bats that sell for a premium price.

21 17. Many of Easton’s customers who buy its baseball bats are parents of
22 school age children in middle school and high school who play competitively for
23 various local and national youth baseball leagues.

24 18. All of Easton’s bats are labeled and advertised with the exact
25 dimensions of the bats’ diameter, length, and weight. The diameter and length are
26 displayed in inches, and the weight is displayed in ounces in terms of the “weight
27 drop.”

1 in the outfield.

2 **Defendant Sells Mislabeled, Overweight Bats**

3 26. Unbeknownst to many of the consumers who have purchased Easton's
4 baseball bats, certain bats that Easton has sold actually weigh significantly more than
5 their labeled and advertised weight.

6 27. For example, Bat Digest, an independent organization that reviews and
7 writes about baseball bats, conducted a study in 2017 that compared Easton's bats'
8 actual weight to their stated weight. As part of this study, Bat Digest concluded that
9 "there is considerable difference between the stated weight, actual weight and the
10 swing weight of the bat."¹

11 28. The Bat Digest study evaluated several models of Easton bats in a
12 variety of lengths and weights and found that the bats were consistently between .5
13 and 2 ounces overweight in relation to their labeled and advertised weight. As
14 explained above, these weight differences are significant and material.

Year	Easton Bat	League	Stated Length	Stated Weight	Actual Weight	Difference
2018	Beast X 2 3/4	USSSA	31	21	21.9	+0.9
2018	Beast X Loaded	BBCOR	33	30	31.4	+1.4
2018	Beast X Speed	BBCOR	32	29	30.7	+1.7
2018	Beast X Speed	BBCOR	33	30	31.2	+1.2

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27 ¹ <https://www.justbatreviews.com/bat-lab/bat-actual-weight-vs-bat-stated-weight/> (last
28 visited Apr. 17, 2018).

1	2018	Ghost X	USSSA	32	22	22.75	+0.75
2							
3	2018	Ghost X	USABat	31	21	21.5	+0.5
4							
5	2018	Ghost X	BBCOR	33	30	30.9	+0.9
6							
7	2018	Ghost X	BBCOR	32	29	29.75	+0.75
8							
9	2018	Ghost X 2 3/4	USSSA	31	21	22.2	+1.2
10							
11	2018	Ghost X Hybrid	USABat	31	21	22.4	+1.4
12							
13	2018	Ghost X Hyperlite	USABat	31	20	19.8	-0.2
14							
15	2018	Magnum	USABat	29	19	21	+2
16							
17	2017	MAKO Beast	BBCOR	32	29	30.25	+1.25
18							
19	2017	Z-Core Lock & Load	BBCOR	33	30	30.7	+0.7
20							

21 29. Easton has yet to provide full relief for consumers who purchased
22 overweight bats. Generally, once the packaging and plastic covering is torn off of a
23 new bat, Easton will not replace or refund the purchase price of the bat absent a
24 showing of some obvious manufacturer's defect.

25 30. Easton has received significant profits from its false marketing and sale
26 of the baseball bats purchased by Plaintiff and other consumers.

1 **Facts Specific to Plaintiff**

2 31. Plaintiff's minor son plays youth baseball.

3 32. In November 2017, Plaintiff purchased a brand-new Easton S750C
4 (-10) 2 5/8" barrel bat for from a sporting goods store located at 376 Cox Creek
5 Pkwy., Florence, Alabama.

6 33. The baseball bat model that Plaintiff purchased cost over \$160 and is
7 depicted below:



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15 34. The bat that Plaintiff purchased prominently featured a label
16 representing the bat's purported weight as 22 ounces when it in fact did not weigh
17 that amount. The label on the bat that Plaintiff purchased as it appears on his bat is
18 depicted below:



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25 35. Easton misrepresented to Plaintiff that the Easton S750C (-10) 2 5/8"
26 barrel bat he purchased weighed 22 ounces through, among other things, the label
27 on the bat, and intended that Plaintiff rely on that representation in making his
28

1 purchase. Plaintiff reviewed the label prior to purchasing the bat and did in fact rely
2 on Easton's representations.

3 36. In actuality, however, the bat Plaintiff purchased is not 22oz as
4 advertised. Plaintiff's bat is approximately 3oz heavier, making it closer to a drop 7
5 (-7) instead of a drop 10 (-10).

6 37. Because Plaintiff's bat is overweight, Plaintiff's son cannot use the bat
7 for training or play in baseball leagues and tournaments as intended.

8 38. As a result, Plaintiff has suffered economic losses and monetary
9 damages, including but not limited to the purchase price he paid for his bat.

10 39. Despite being misled by Defendant's labeling, Defendant would like to
11 purchase Easton bats for his son in the future if in fact the bats were accurately
12 labeled. Plaintiff is unable to do so, however, because Defendant's false and
13 misleading labels and advertising prevent him from purchasing an appropriate bat.

14 40. Plaintiff is not alone in his experiences, and many of Easton's other
15 customers throughout the country have had nearly identical experiences.

16 41. Indeed, Easton's practice of selling and distributing mislabeled, falsely
17 advertised bats is widespread and well documented, as seen from just a few examples
18 of the many consumer complaints about this practice that have been publicly posted
19 online:

20 • **Easton bats are heavy**

21 Have you ever noticed your kids [sic] bat from Easton is a little heavy?
22 Well, you are correct. Easton sends out bats that do not match the
23 stickered weight, especially in youth bats. People buy a bat expecting a
24 28/17oz and get home and weigh the bat and it is 28/19.3oz....whoooooa,
25 1.3oz heavier? Correct, almost 1 1/2oz heavier than stickered. The
26 weight differential varies but in a lot of cases it is near 2oz; which is a
27 little crazy.²

28 ² <http://www.bigdawgbatrolling.com/easton-bats-are-heavy.htm> (last visited May 14, 2018).

- The most consistent complaint that I've heard revolves around the weight. While it's great that this [Easton] bat comes in a variety of lengths and weights, the weight isn't consistently accurate or evenly distributed.

When weight [sic] the bat, I've seen a difference as high as about 2 1/2 oz. That's a pretty significant weight difference. . . .

Many players and coaches have an expectation of what a -10 drop can do. However, adding the 2.5 oz makes this a -7.5 drop which is significantly different.³

CLASS ACTION ALLEGATIONS

42. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiff brings this action on behalf of himself and a nationwide class (the "Class") defined as follows:

The Class: all persons in the United States who, between February 28, 2017 and the present, purchased any model(s) of Easton baseball bat(s) from Easton or a retailer, where such bats were purchased in new condition and were labeled as being a lighter weight than they actually were.

43. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any Easton officer, director, or employee; and any immediate family members of such officers, directors, or employees.

44. Upon information and belief, there are hundreds, if not thousands, of members of the Class such that joinder of all members is impracticable.

45. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions, and Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

³ <https://batandballgame.com/best-easton-baseball-bats-review/> (last visited May 14, 2018).

1 46. Plaintiff's claims are typical of the claims of the Class members,
2 because the factual and legal bases of Defendant's liability to Plaintiff and to the
3 other members of the Class are the same, resulting in injury to the Plaintiff and to all
4 of the other members of the Class as a result of Defendant's false advertisement of
5 the baseball bats at issue.

6 47. Numerous common questions of law and fact exist as to all members of
7 the Class, and such questions predominate over questions affecting Plaintiff or
8 individual members of the Class. Common questions for the Class include, but are
9 not limited, to the following:

- 10 (a) Whether Easton falsely advertised, represented, and/or warranted that
11 its baseball bats weighed a certain amount;
- 12 (b) Whether Easton's advertising of its baseball bats is false, deceptive, or
13 misleading;
- 14 (c) Whether Easton's conduct violated California Business and Professions
15 Code Section 17200;
- 16 (d) Whether Easton's conduct violated California Business and Professions
17 Code Section 17500;
- 18 (e) Whether Easton's representation of material facts with respect to the
19 weight of its baseball bats caused Plaintiff and other members of the
20 Class ascertainable monetary losses;
- 21 (f) Whether Plaintiff and the other members of the Class are entitled to
22 monetary, restitutionary, or other remedies, and, if so, the nature of such
23 remedies; and
- 24 (g) Whether Defendant should be enjoined from engaging in such conduct
25 in the future.

26 48. Defendant has acted and failed to act on grounds generally applicable
27 to the Plaintiff and the other members of the Class in misrepresenting the baseball
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1 bats at issue, requiring the Court’s imposition of uniform relief to ensure compatible
2 standards of conduct toward the members of the Class and making injunctive or
3 corresponding declaratory relief appropriate for the Class as a whole.

4 49. Absent a class action, most members of the Class would find the cost
5 of litigating their claims to be prohibitive and would have no effective remedy. The
6 class treatment of common questions of law and fact is also superior to multiple
7 individual actions or piecemeal litigation in that it conserves the resources of the
8 courts and the litigants and promotes consistency and efficiency of adjudication.

9 **COUNT I**

10 **Violation of the California Business and Professions Code: False Advertising**
11 **(Cal. Bus. & Prof. Code § 17500) on behalf of Plaintiff and the other members**
12 **of the Class**

13 50. Plaintiff hereby incorporates the foregoing allegations by reference as
14 though fully set forth herein.

15 51. Section 17500 of the California Business and Professions Code
16 generally prohibits untrue or misleading advertising.

17 52. Section 17500 provides, in relevant part, that:

18 It is unlawful for any person . . . to make or disseminate or cause to be made
19 or disseminated before the public in this state, or to make or disseminate or
20 cause to be made or disseminated from this state before the public in any state
21 . . . any statement, concerning [] real or personal property or [] services,
22 professional or otherwise, . . . which is untrue or misleading, and which is
23 known, or which by the exercise of reasonable care should be known, to be
24 untrue or misleading

25 53. Defendant’s practice of advertising and labeling certain Easton baseball
26 bats with stated weights that are materially less than their actual weights constitutes
27 a deceptive, untrue, and misleading advertising practice, because it gives the false
28 impression that the bats are lighter than they actually are, causing harm to those who
purchased them as described herein.

1 54. Defendant, as the manufacturer and distributor of Easton bats, knew or
2 should have known that its representations concerning the weights of nonconforming
3 Easton baseball bats were untrue, misleading, and likely to cause confusion among
4 consumers.

5 55. Plaintiff and the other Class members saw and reasonably relied on
6 Defendant's representations appearing on the labeling and packaging of its bats.
7 Based on these representations, Plaintiff and the other Class members reasonably
8 believed that they were purchasing bats weighing the amount displayed on their
9 respective bats' labels. Instead, they received a bat that did not conform to
10 Defendant's labeling and advertising.

11 56. Because the bats' stated weights were inaccurate, Defendant's conduct
12 in selling its bats with inaccurate labels that misrepresented the bats' weights caused
13 Plaintiff and the other Class members to believe that the bats were materially lighter
14 than they actually were.

15 57. The weight of Defendant's bats is material to Plaintiff and the other
16 Class members who purchased such bats. Because Defendant advertises and markets
17 Easton bats as premium, high-end bats costing in excess of \$350, Defendant's
18 customers are generally more discerning purchasers who care very strongly about
19 selecting a bat of the appropriate size for the player and with the correct
20 specifications in order to optimize performance in competitive play. Had Plaintiff
21 and the other Class members known that the bats they were buying actually weighed
22 significantly more than the amount stated on the label, they would not have made
23 their respective purchases and instead would have bought a bat in the correct size.

24 58. Through false advertising and mislabeled products, Defendant has
25 created and continues to create the likelihood that members of the public will be
26 deceived as to the correct weight of the bats they purchase, since reasonable
27 consumers will rely on Defendant's product labeling as to the weight of the bat they
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1 are buying.

2 59. As a direct and proximate result of Defendant’s unlawful and false
3 advertising practices as set forth above, Plaintiff and the other Class members have
4 suffered economic losses and actual damages, including the purchase price they paid
5 for the nonconforming bats, and Defendant has been unjustly enriched through
6 proceeds from the sale of falsely advertised bats.

7 **COUNT II**

8 **Violation of the California Business and Professions Code: Unfair Business**
9 **Practices (Cal. Bus. & Prof. Code § 17200 *et seq.*) on behalf of Plaintiff and the**
10 **other members of the Class**

11 60. Plaintiff incorporates by reference all of the foregoing allegations as
12 if fully set forth herein.

13 61. California’s Unfair Competition Law (“UCL”) defines unfair
14 competition to include any “unlawful, unfair or fraudulent” act or practice, as well
15 as any “unfair, untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

16 62. Section 17200 of the UCL applies to all Class members’ claims,
17 because Defendant’s poor quality control measures and decisions as to the bats’
18 marketing and labeling occurred within and emanated from its headquarters located
19 in the State of California.

20 63. Under the UCL, a business act or practice is “unlawful” if it violates
21 state or federal law.

22 64. Defendant has engaged in “unlawful” conduct in violation of the UCL,
23 because its bats are falsely and misleadingly advertised as being substantially lighter
24 than they actually are in violation of Cal. Bus. & Prof. Code § 17500 and other laws
25 as described herein.

26 65. Further, Defendant’s conduct is “unfair” in violation of the UCL,
27 because its practice of selling mislabeled products is immoral, unethical, oppressive,
28 unscrupulous, and substantially injurious to customers, such that the gravity of the

1 harm to Plaintiff and the other members of the Class outweighs any utility of
2 Defendant's conduct. Defendant has caused substantial injury to consumers through
3 the sale of mislabeled products that are likely to confuse those who wish to and
4 actually do purchase them.

5 66. Defendant's false and inaccurate labeling is of no benefit to consumers,
6 and as such the harms Defendant causes is not outweighed by any countervailing
7 benefits to those who purchased Defendant's mislabeled bats.

8 67. The harm Defendant caused to Plaintiff and the other Class members is
9 not an injury they could have avoided, because they were unaware at the time of
10 purchase that Defendant's advertising and labeling were false.

11 68. Finally, Defendant has also committed "fraudulent" acts under the
12 UCL, because its falsely labeled bats deceive (and are likely to deceive) members of
13 the public who reasonably rely on the labels and stated weights when deciding to
14 purchase a given bat. Indeed, Plaintiff and the other Class members purchased
15 Defendant's bats believing that their actual weight was the amount stated on the bats'
16 labeling and advertising.

17 69. As a direct and proximate result of Defendant's unlawful, unfair, and
18 fraudulent practices described above, Plaintiff and the other Class members have
19 suffered economic losses and actual damages, including the purchase price they paid
20 for the nonconforming bats, and Defendant has been unjustly enriched through
21 proceeds from the sale of mislabeled bats.

22 **COUNT III**
23 **Breach of Express Warranty**
24 **(on behalf of Plaintiff and the other members of the Class)**

25 70. Plaintiff hereby incorporates the foregoing allegations by reference as
26 though fully set forth herein.

27 71. Through product labeling and advertising, Defendant created written
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1 express warranties and expressly warranted to Plaintiff and the other members of the
2 Class that the bats they purchased weighed a specific amount.

3 72. Specifically, Defendant stamped each affected bat with a label
4 expressly warranting that the bat weighed a certain amount in ounces. These labels
5 are affirmations of fact or promises made by Defendant to consumers that its bats do
6 in fact weight the stated amounts. Further, the labels constitute a description of the
7 bats and their characteristics. As such, Defendant uniformly made a written express
8 warranty to Plaintiff and the other Class members, warranting that its bats weighed
9 a specific amount in ounces.

10 73. Prior to making their respective purchases, Plaintiff and the other Class
11 members sought out and relied on Defendant's express warranty that Easton bats
12 weighed a specific amount, appropriate for the person who would be using the bat.
13 Thus, the weight representations made by Defendant formed a part of the basis of
14 the bargain between Defendant on the one hand and Plaintiff and the other Class
15 members on the other.

16 74. Defendant's weight markings were stamped on Easton bats and were
17 communicated to bat purchasers prior to making their respective purchases from
18 Easton or its third-party dealers authorized to sell Easton bats.

19 75. Indeed, Defendant was in full control of the information and access to
20 information it provided on the labels for its bats. As such, a special relationship
21 existed between Defendant and Plaintiff whereby Defendant, in its position of
22 superior power, was obligated to conform its goods to the express written warranties
23 it proffered.

24 76. Defendant breached its express warranties to Plaintiff and the other
25 Class members because, as explained above, its nonconforming bats are
26 substantially and materially heavier than labeled.

27 77. As a direct and proximate result of Defendant's breach of its express
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1 warranties, Plaintiff and the members of the Class have suffered economic losses
2 and actual damages, including the purchase price they paid for the nonconforming
3 bats, in an amount to be determined at trial.

4 **COUNT IV**
5 **Breach of Implied Warranty**
6 **(on behalf of Plaintiff and the other members of the Class)**

7 78. Plaintiff hereby incorporates the foregoing allegations by reference as
8 though fully set forth herein.

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

12 80. Defendant, as the marketer and distributor of the Easton baseball bats
13 purchased by Plaintiff and the other members of the Class, is a merchant.

14 81. Plaintiff and the other Class members purchased Defendant's baseball
15 bats in consumer transactions.

16 82. At the time Plaintiff and Class members purchased the Defendant's
17 bats, Defendant was in the business of marketing and selling such bats in its ordinary
18 course of business.

19 83. The overweight baseball bats that Defendant sold were not fit for the
20 ordinary purposes for which they were sold, and they did not conform to the
21 expectations of consumers. Individuals who purchased Defendant's overweight bats
22 cannot use them for training, practice, or in games, because the additional weight
23 interferes with performance and increases the risk of sports injuries.

24 84. Defendant's implied warranties extend to Plaintiff and the other Class
25 members because it knew the purposes for which Plaintiff and the other Class
26 members purchased the bats at issue, and Defendant manufactured the bats
27 specifically for those purposes. Specifically, Defendant knew that Easton bats would
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1 be purchased or used by baseball players who made their selections based on the
2 advertised length and weight of the bats.

3 85. Specifically, Defendant made representations in the form of marketing
4 and product labeling setting forth incorrect weights for its bats. Plaintiff and other
5 Class members relied on such misrepresentations prior to purchasing their respective
6 bats from Defendant or its authorized retailers.

7 86. Further, Plaintiff and the other Class members, as the target consumers
8 for Easton Bats, were third-party beneficiaries to agreements between Defendant and
9 its authorized retailers to sell Easton bats.

10 87. Mislabeled bats that are materially heavier than the stated and expected
11 weight also constitute a dangerous instrumentality due to the risk of injury to the
12 batter as well as other players in proximity of the defective bat.

13 88. Plaintiff and the other Class members did not receive the baseball bats
14 that were warranted to them, because the baseball bats they purchased did not
15 conform to the weight representations and promises made by Defendant through its
16 labeling.

17 89. As a direct and proximate result of Defendant's breach of its implied
18 warranties, Plaintiff and the other Class members suffered actual monetary damages
19 in an amount to be determined at trial.

20 **COUNT V**
21 **Unjust Enrichment**
22 **(in the alternative and on behalf of Plaintiff and the other Class members)**

23 90. Plaintiff hereby incorporates the allegations in paragraphs 1 – 69 by
24 reference as though fully set forth herein.

25 91. Plaintiff and the other Class members conferred a benefit on Defendant
26 by purchasing the non-conforming baseball bats. This benefit is measurable using
27 the profits and revenues from Defendant's bats and the premium built into the cost

1 of Defendant's bats to consumers as a result of Defendant's advertising, goodwill
2 endeavors, product research and development, and other costly brand-building
3 efforts. Defendant appreciates or has knowledge of such benefit.

4 92. Defendant's retention of this benefit violates principles of justice,
5 equity, and good conscience.

6 93. It would be inequitable and unjust for Defendant to retain the benefit of
7 revenues obtained from purchases of its non-conforming baseball bats by Plaintiff
8 and the other Class members, because Defendant materially misrepresented the
9 weights of the baseball bats such that the baseball bats were no longer age and
10 strength appropriate.

11 94. Accordingly, because Defendant will be unjustly enriched if allowed to
12 retain such funds, Defendant must pay restitution to Plaintiff and the other Class
13 members in the amount by which Defendant was unjustly enriched through sales of
14 non-conforming baseball bats.

15 **COUNT VI**

16 **Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*)**
17 **(on behalf of Plaintiff and the other members of the Class)**

18 95. Plaintiff hereby incorporates the foregoing allegations by reference as
19 though fully set forth herein.

20 96. Plaintiff and the other Class members are "consumers" within the
21 meaning of 15 U.S.C. § 2301(3).

22 97. Defendant is a "supplier" and "warrantor" within the meaning of 15
23 U.S.C. § 2301(4)-(5).

24 98. The Easton bats manufactured and sold by Defendant are "consumer
25 products" as defined by 15 U.S.C. § 2301(1).

26 99. Defendant's representations as to the weight classification for its
27 Easton bats constitute express and implied warranties under 15 U.S.C. § 2301(6) and
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1 § 2301(7), respectively.

2 100. Pursuant to 15 U.S.C. §2301(d)(1), Plaintiff and the other Class
3 members have a private right of action against Defendant for its failure to comply
4 with the written and/or implied warranties concerning its Easton bats.

5 101. As discussed above, Defendant breached its express and implied
6 warranties by materially mislabeling and misrepresenting the weights of its Easton
7 bats.

8 102. Plaintiff and the other Class members were intended third-party
9 beneficiaries of agreements between Defendant and authorized retailers to sell
10 Easton Bats. Plaintiff and the Class members were the only intended ultimate
11 consumers of the Easton bats and the only parties with rights under Defendant's
12 express and/or implied warranties.

13 103. Indeed, Plaintiff and other Class members purchased Defendant's
14 Easton bats from Defendant and/or through third-party retailers authorized to sell
15 Easton bats.

16 104. As a direct and proximate result of Defendant's breaches of its express
17 and/or implied warranties, Plaintiff and the other Class members suffered injuries in
18 an amount that exceeds twenty-five dollars (\$25.00), individually, and fifty-
19 thousand dollars (\$50,000.00), collectively.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully
22 prays for the following relief:

- 23 A. An order certifying the Class as defined above;
- 24 B. An award of actual or compensatory damages to Plaintiff and the other
25 members of the Class or, in the alternative, restitution and disgorgement
26 of all funds unjustly retained by Defendant as a result of its unfair and
27 deceptive advertising and sales practices;

- 1 C. An injunction requiring Defendant to cease all mislabeling and
- 2 misrepresentations as to Easton bats' weight;
- 3 D. An award of reasonable attorneys' fees and costs; and
- 4 E. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

6 Plaintiff requests trial by jury of all claims that can be so tried.

7 Dated: July 30, 2018

Respectfully submitted,

8 By: /s/ Paul T. Geske
9 One of Plaintiff's Attorneys

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