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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 RICHARD SOTELO, on behalf of ) 19 himself and all others similarly ) situated, ) 20 Plaintiff, ) 21 v. ) 22 RAWLINGS SPORTING GOODS ) COMPANY, INC., ) 23 Defendant. )	AMENDED CLASS ACTION ) COMPLAINT FOR ) FOR DAMAGES & ) INJUNCTIVE RELIEF ) 1. Violation of the California ) Unfair Competition Law ) (Cal. Bus. & Prof. Code ) § 17200, <i>et seq.</i> ) 2. Violation of the California ) False Advertising Law ) (Cal. Bus. & Prof. Code ) § 17500, <i>et seq.</i> ) 3. Violation of the ) Consumers Legal ) Remedies Act (Cal. Civ. ) Code § 1750, <i>et seq.</i> ) 4. Breach of Express Warranty ) 5. Breach of Implied Warranty ) 6. Unjust Enrichment )
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1 **INTRODUCTION**

2 1. Plaintiff Richard Sotelo brings this consumer class action on behalf of  
3 himself and all other similarly-situated consumers against Rawlings Sporting Goods  
4 Company, Inc. (“Rawlings” or “Defendant”) for misrepresenting the weights of its  
5 baseball bats either directly (on the bat itself or on its own website,  
6 [www.rawlings.com](http://www.rawlings.com)) or via information it provides to third-party online retailers who  
7 sell such Rawlings bats directly to consumers.

8 2. Rawlings manufactures, distributes and sells, among other things,  
9 youth baseball bats that it advertises and labels as being a specific weight in ounces.  
10 When authorized third-party online retailers sell Rawlings bats, they advertise and  
11 sell them using the information provided directly from Rawlings regarding the  
12 weight, which is stated by Rawlings right on the bat itself. Purchasers of these  
13 Rawlings bats, including Plaintiff herein, rely on those representations as the weight  
14 is crucial to the decision as to which bat to buy. This class action arises out of the  
15 uniform misrepresentation by Rawlings, on the bats, on its own website, and  
16 through third-party online retailers to which Rawlings provided the bat  
17 specifications, regarding the weight of its baseball bats. If, unbeknownst to the  
18 purchaser, a bat is not the weight at which it is represented, it can negatively affect  
19 performance. It can even cause injury to the user and other players.

20 3. On November 27, 2017, through the online retailer  
21 [www.baseballsavings.com](http://www.baseballsavings.com), Plaintiff purchased for his son a 2018 Rawlings Youth  
22 5150 USA baseball bat (“5150 bat”), which was advertised on that website as being  
23 27 inches long and weighing 16 ounces (which means it is a -11 “weight drop,”  
24 discussed more fully below). Rawlings provided the information, including the  
25 weight (which is marked on the bat) to this online retailer, which states on its  
26 website that it is an authorized dealer of Rawlings. However, the 5150 bat  
27 purchased by Plaintiff actually weighs approximately 18.6 ounces, a 2.6 ounce  
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1 weight difference which was material to Plaintiff in choosing to purchase the 5150  
2 bat. In fact, as Rawlings knows and expressly states and advertises on its own  
3 website, any weight difference for the Rawlings bats is material for all purchasers of  
4 its bats.

5 4. Plaintiff relied on the representation by Rawlings through  
6 [www.baseballsavings.com](http://www.baseballsavings.com) that the 5150 bat weighed 16 ounces. Had Plaintiff  
7 known the truth about the weight of the 5150 bat, *i.e.*, that it was not as represented,  
8 he would not have purchased the bat, or would have paid less for it.

9 5. Plaintiff seeks redress for himself and all others similarly situated who  
10 purchased Rawlings bats that were falsely labeled and advertised with an incorrect  
11 weight. Plaintiff seeks equitable relief, including injunctive and declaratory relief,  
12 as well as all applicable equitable and actual damages under the law, and reasonable  
13 attorneys' fees and costs.

#### 14 **JURISDICTION AND VENUE**

15 6. This Court has subject matter jurisdiction over this matter pursuant to  
16 the Class Action Fairness Act, 28 U.S.C. § 1332(d) *et seq.*, because this is a class  
17 action in which the matter in controversy exceeds the sum or value of \$5,000,000  
18 exclusive of interest and costs; there are greater than 100 putative class members; at  
19 least one putative class member (and Plaintiff himself) is a citizen of a state other  
20 than Defendant's state of citizenship; and none of the exceptions under subsection  
21 1332(d) applies to this case.

22 7. This Court may assert general personal jurisdiction over Defendant  
23 because its contacts with this District are sufficient in that it does substantial  
24 business in this District.

25 8. Venue is proper in this District under 28 U.S.C. § 1391(b)-(c) because  
26 Rawlings does substantial business in this District and is deemed to reside in any  
27 judicial district in which it is subject to personal jurisdiction at the time the action is  
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1 commenced.

2 **PARTIES**

3 9. Plaintiff Richard Sotelo is a citizen of California and a resident of  
4 Canyon Country, California, which lies within this District.

5 10. Defendant Rawlings is a manufacturer, marketer and seller of sporting  
6 goods. Rawlings is headquartered in Town and Country, Missouri. It has been in  
7 business since 1887.<sup>1</sup> In or about July 2018, Rawlings was acquired from Newell  
8 Brands by Los Angeles-based private equity firm Seidler Equity Partners and Major  
9 League Baseball.<sup>2</sup> Rawlings' products include the baseball bats at issue in this  
10 matter, which are sold online through its own website, [www.rawlings.com](http://www.rawlings.com), through  
11 other online retailers like [www.baseballsavings.com](http://www.baseballsavings.com) and Amazon, and in retail  
12 stores located in California and throughout the country.

13 11. During the relevant time, Rawlings controlled the manufacture, design,  
14 testing, packaging, labeling, assembly, marketing, advertising, promotion,  
15 distribution, and sales of Rawlings bats, including the quality control process for the  
16 weights of the bats. Rawlings thus had complete control over how to label its bats  
17 as to their proper and accurate weight.

18 **THE RAWLINGS BATS**

19 12. Each Rawlings bat, including the 5150 bat, is labeled and advertised as  
20 being a specific length and weight. As discussed above, these specifications are  
21 provided by Rawlings either directly to consumers (*i.e.*, stated on the bat and on  
22 Rawlings' own website), or to third-party online retailers who sell Rawlings bats  
23 and state on their websites the specifications, including the weight, of the bat.

24 \_\_\_\_\_  
25 <sup>1</sup> <https://www.rawlings.com/about/about-company.html> (last visited January 28, 2019).

26 <sup>2</sup> [https://www.stltoday.com/business/local/st-louis-county-based-rawlings-sold-to-group-that-includes/article\\_9695321a-a1e5-57ce-aeb9-72abe9fa19fa.html#tncms-source=infinity-scroll-summary-siderail-latest](https://www.stltoday.com/business/local/st-louis-county-based-rawlings-sold-to-group-that-includes/article_9695321a-a1e5-57ce-aeb9-72abe9fa19fa.html#tncms-source=infinity-scroll-summary-siderail-latest) (last visited October 18, 2018); <http://www.roi-nj.com/2018/07/02/industry/newell-wraps-up-sales-of-waddington-rawlings-units/> (last visited  
27 October 18, 2018).  
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1 However, Rawlings bats are not the weight that they are represented to be by  
2 Rawlings, either directly or through third-party online retailers, which constitutes a  
3 material misrepresentation because the weight of a bat is critical to the purchase  
4 decision.

5 13. As the manufacturer of the bats, Rawlings labels them and provides the  
6 specifications to third-party online retailers who post these specifications (including  
7 the weight of the bats) on their websites when selling the Rawlings bats.<sup>3</sup> Rawlings  
8 authorizes certain online and retail stores to be authorized dealers of its bats. The  
9 website [www.baseballsavings.com](http://www.baseballsavings.com) states it is an authorized dealer of Rawlings'  
10 products. The Rawlings website contains an authorized dealer locator.<sup>4</sup> Rawlings  
11 further states on its website that its warranty covers products purchased from  
12 authorized Rawlings dealers and that "if you need clarification on whether a  
13 particular retailer is an authorized Rawlings dealer, please contact customer service  
14 at 1-800-729-5464."<sup>5</sup> On [www.baseballsavings.com](http://www.baseballsavings.com), it states, "If you've purchased  
15 a **bat** (that's under warranty) and are not completely satisfied with its performance,  
16 please return it **directly to the manufacturer.**"<sup>6</sup>

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19 <sup>3</sup> See, e.g., <https://www.baseballsavings.com/baseball-bats/usa-baseball-bats/rawlings-5150-usa-%28-11%29-baseball-bat-p132981--1> (last visited January 28, 2019)(specifying the weight of the 2019 Rawlings 5150 USA Baseball Bat as 16 oz.);  
20 [https://www.amazon.com/Rawlings-2018-5150-USA-Baseball/dp/B079Y77HV8/ref=pd\\_sbs\\_200\\_1/135-4359114-9700211?encoding=UTF8&pd\\_rd\\_i=B079Y77HV8&pd\\_rd\\_r=a483aee1-2350-11e9-8739-9941e184f583&pd\\_rd\\_w=ntisC&pd\\_rd\\_wg=NQe1A&pf\\_rd\\_p=588939de-d3f8-42f1-a3d8-d556eae5797d&pf\\_rd\\_r=1KZ6Y29X81ATHE56X4FR&refRID=1KZ6Y29X81ATHE56X4FR](https://www.amazon.com/Rawlings-2018-5150-USA-Baseball/dp/B079Y77HV8/ref=pd_sbs_200_1/135-4359114-9700211?encoding=UTF8&pd_rd_i=B079Y77HV8&pd_rd_r=a483aee1-2350-11e9-8739-9941e184f583&pd_rd_w=ntisC&pd_rd_wg=NQe1A&pf_rd_p=588939de-d3f8-42f1-a3d8-d556eae5797d&pf_rd_r=1KZ6Y29X81ATHE56X4FR&refRID=1KZ6Y29X81ATHE56X4FR)  
21 (last visited January 28, 2019)(specifying the weight of the 2018 Rawlings 5150 USA Baseball  
22 Bat as 16 oz.).

23  
24  
25 <sup>4</sup> <http://knowledge.rawlingsgear.com/article/15628/26064/> (referring consumers to  
26 <http://rawlings.com/dealer-locator/> (last visited January 28, 2019).

27 <sup>5</sup> <https://www.rawlings.com/help/help-warranty.html> (last visited January 28, 2019).

28 <sup>6</sup> <https://www.baseballsavings.com/faq> (emphasis in original)(last visited January 28, 2019).

1       14.       On Rawlings' website under Frequently Asked Questions it states,  
2 "What size bat should I get?" and the Answer includes, "Determine Your Bat  
3 Weight. Bats are weighted in ounces, and Rawlings does a great job in balancing  
4 the bat's weight to its length." Thus, Rawlings controls and determines the weights  
5 of its bats and how they are labeled. The Rawlings website further states, "Selecting  
6 the proper weight depends on two critical factors – your **strength** and your **hitting**  
7 **style**".<sup>7</sup> Thus, Rawlings acknowledges on its own website that "[s]electing the  
8 proper weight" of a bat is a material consideration to the purchase decision.

9       15.       The Rawlings website also states, under the heading "Sizing":  
10 "Choosing the right-sized bat is important to a player's performance and  
11 development. Players with less experience should start with lighter bats for better  
12 swing control. More experienced players should use a heavier bat to help maximize  
13 power. A bat that is too heavy will dramatically reduce swing speed; if a bat is too  
14 light, the player could miss out on the extra force that a heavier bat can generate."<sup>8</sup>

15       16.       The Rawlings website further states, under the heading "Weight": "Bat  
16 weight is measured in ounces (oz.)" and explains, under the heading "Weight Drop":  
17 "Weight drop = bat length (in.) – bat weight (oz.)". It continues: "For example, a  
18 32-inch, 22-ounce bat would have a drop weight of -10. Typically, the higher the  
19 competition or league level, the lesser the weight drop. A lesser weight drop means  
20 the bat feels heavier, so a -5 bat will feel heavier than a -10 bat."<sup>9</sup>

21       17.       As the Rawlings website makes clear, the weight of a bat is critical to  
22 bat purchasers making a bat purchase. The fact that the Rawlings bats come in  
23 various sizes that are only one inch and only one ounce apart demonstrates that even  
24 a single ounce difference is material to a purchase decision. For example, on

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25       <sup>7</sup> <http://knowledge.rawlingsgear.com/article/15628/38990/Bat-Size> (emphasis in  
26 original)(last visited January 28, 2019).

27       <sup>8</sup> <https://www.rawlings.com/bats/bat-guide/> (last visited January 28, 2019).

28       <sup>9</sup> *Id.*

1 Rawlings' website, the 2018 5150 USA Baseball Bat came in the following sizes  
2 with a -11 drop: 27 inch/16 oz; 28 inch/17 oz; 29 inch/18 oz; and 30 inch/19 oz.<sup>10</sup>  
3 Similarly, on Rawlings' website, the 2018 5150 USA Baseball Bat came in the  
4 following sizes with a -10 drop: 27 inch/17 oz; 28 inch/18 oz.<sup>11</sup> In other words,  
5 every ounce matters. The same increments of weights are generally available on  
6 third-party online retailer websites, including [www.baseballsavings.com](http://www.baseballsavings.com). And  
7 similar bat buying guides are available on the third-party online retailers' websites,  
8 including [www.baseballsavings.com](http://www.baseballsavings.com), which make clear the importance of the  
9 weight of the bat to the purchase decision.<sup>12</sup>

10 18. Similarly, as noted above, the Rawlings website recognizes that the  
11 weight drop is also a critical factor in choosing a bat. Because the weight drop is a  
12 function of the length less the weight, if the weight is inaccurate for the bat so, too,  
13 will be the weight drop. Because Rawlings misrepresents the weights of its bats and  
14 provides that incorrect information to sellers of its bats, the weight drops are also  
15 misrepresented both directly by Rawlings and through third-party online retailers,  
16 including [www.baseballsavings.com](http://www.baseballsavings.com).

17 19. Consumers, like Plaintiff Sotelo, rely on Rawlings' representations,  
18 either directly or through third-party online retailers, about the weight of Rawlings'  
19 baseball bats. In fact, in choosing which bat to purchase, the weight is a key  
20 consideration.

21 20. Consumers use the bats recreationally, in amateur sports competitions,  
22 and in other scenarios in which the advertised weight is of material importance to  
23 the consumer. Knowing that the weight is material to the purchase decision,  
24 Rawlings places the weight on the label of its bats, as shown below. Moreover, it is

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26 <sup>10</sup> <https://www.rawlings.com/product/US8511.html> (last visited October 18, 2018).

27 <sup>11</sup> <https://www.rawlings.com/product/US8510.html> (last visited October 18, 2018).

28 <sup>12</sup> <https://www.baseballsavings.com/bats-buying-guide> (last visited January 28, 2019).

1 for this reason that third-party online retailers uniformly state the weight of the bat  
2 on their websites, which they obtain from Rawlings (including by virtue of the fact  
3 that the weight is stated on the bat by Rawlings).

4 21. The weight of the bat affects everything the player does, including bat  
5 speed, bat control, type and angle of swing, exit velocity, batting stance, and  
6 approach to pitches.

7 22. The weight of the bat is especially important because of the risk of  
8 injury of using a bat that is too heavy for the player. The player may get tired faster  
9 or strain muscles and ligaments. The bat could also be a danger to other players and  
10 bystanders.

11 23. In some youth leagues, the weight of the bat is specified, making its  
12 accuracy an important factor in the purchase decision.

13 24. Thus, even variation of one ounce can make a significant difference in  
14 performance, as recognized by Rawlings' and third-party online websites, *supra*,  
15 including [www.baseballsavings.com](http://www.baseballsavings.com), and consumers like Plaintiff Sotelo and the  
16 class shop for bats based in large part on their weight.

17 25. Whether consumers purchased a Rawlings bat in a store, where they  
18 saw the label stating the weight, on Rawlings' website (where the weight is stated  
19 by Rawlings and the bat sold in part on the basis of that information,) or on a third-  
20 party online website (where the specifications including weight are provided by  
21 Rawlings and the bat sold in part on the basis of that information), all  
22 purchasers/class members were exposed to the same misrepresentation for any  
23 model of Rawlings baseball bat during the applicable limitations period that was  
24 misrepresented or falsely labeled as being a different weight than it actually is.

25 **Plaintiff Sotelo's Facts**

26 26. On November 27, 2017, Sotelo purchased a new 2018 5150 bat for a  
27 price of \$72.76, plus tax, for a total of \$78.04 on the third-party online retailer

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1 website [www.baseballsavings.com](http://www.baseballsavings.com) for his then 8-year old son, who plays youth  
2 baseball near their home in California.

3 27. Sotelo purchased the 5150 bat for personal, family, or household use.

4 28. The [www.baseballsavings.com](http://www.baseballsavings.com) website specifically stated that the  
5 weight of the bat was 16 ounces. It further stated that the weight drop was -11.  
6 Rawlings provided the information as to the weight of the bat to this online retailer  
7 (including by marking it on the handle as shown below), which states on its website  
8 that it is an authorized dealer of Rawlings.

9 29. The 5150 bat's label represents that it weighs 16 ounces. A picture of  
10 the label on Sotelo's 5150 bat is below:



24 30. In making his purchase decision, Sotelo relied on the representation  
25 contained on the website [www.baseballsavings.com](http://www.baseballsavings.com), which was provided to that  
26 online retailer by Rawlings (including by being stated on the bat by Rawlings), that  
27 the 5150 bat's weight was 16 ounces (with a corresponding weight drop of -11).

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1       31.       Sotelo purchased the 5150 bat for his son because he thought the  
2 relatively light weight would give his son better swing control, among other things.  
3 However, his son did not have better control with the 5150 bat.

4       32.       In fact, Sotelo weighed the bat and it does not weigh 16 ounces as  
5 represented on [www.baseballsavings.com](http://www.baseballsavings.com) but rather weighs approximately 18.6  
6 ounces, approximately 2.6 ounces more than represented by Rawlings and  
7 advertised by [www.baseballsavings.com](http://www.baseballsavings.com) (through the specifications provided to it  
8 by Rawlings). A picture of Sotelo's 5150 bat on the scale is below, which evidences  
9 the 5150 bat's actual weight of 18.6 ounces.



23       33.       This means that the 5150 bat is closer to a -8 drop than a -11 drop,  
24 which feels significantly heavier and is more difficult to swing.

25       34.       Because the 5150 bat is significantly heavier than as labeled, Plaintiff's  
26 son cannot use, and is not using, the bat for training or play.

27       35.       Had Plaintiff known the truth about the weight of the 5150 bat, that it  
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1 was not as represented (*i.e.*, as advertised by [www.baseballsavings.com](http://www.baseballsavings.com) through the  
2 specifications provided to it by Rawlings), he would not have purchased the bat, or  
3 would have paid less for it.

4 **Complaints On-Line About Rawlings Bats Being Heavier Than Advertised**

5 36. Numerous Rawlings consumers have expressed their concern on line at  
6 Amazon.com that various Rawlings bats weigh more than advertised, thus  
7 demonstrating the widespread nature of the deception by Rawlings. These are some  
8 examples:

- 9 • “True weight is far off from the truth!”  
10 By Dinu Mathew on September 2, 2018 (Style Name: -11/16 oz)  
11 “The bat is no where close to 16 oz it is more like 18.5 oz, and I took it off  
12 the wrap which means I am stuck with it”<sup>13</sup>
- 13 • “Weight 2 oz heavy then labeled”  
14 By jarrettdrivera on May 5, 2018 (Style Name: -10/20 oz)  
15 “All of the USA 5150 weigh more the [sic] the labeled so they are really a  
16 drop 8”<sup>14</sup>
- 17 • “Bat weighs 3 ounces more than advertised.”  
18 By Amazon Customer on April 26, 2018 (Style Name: -11/17 oz)  
19 “Ordered this bat for my six year old. Bat weighs 3 more ounces than  
20 advertised. He couldn’t swing the bat.”
- 21 • “WTF!!! Bat is overweight!!!!!!!!!!”  
22 By T Rob on March 27, 2018 (Style Name -10/18 oz)  
23 “Well i order this bat 28 inches long and 18 oz, the bat came in 28 inches

24 \_\_\_\_\_  
25 <sup>13</sup> [https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_1?ie=UTF8&reviewerType=all\\_reviews&sortBy=recent&pageNumber=1#R2G5ALHYRG3O49](https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm_cr_getr_d_paging_btm_1?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=1#R2G5ALHYRG3O49) (last visited October 18, 2018).

26 \_\_\_\_\_  
27 <sup>14</sup> [https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_3?ie=UTF8&reviewerType=all\\_reviews&sortBy=recent&pageNumber=3#R2G5ALHYRG3O49](https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm_cr_getr_d_paging_btm_3?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=3#R2G5ALHYRG3O49) (last visited October 18, 2018).

1 long and has on it 18 oz !!! I put the bat on the scale and it weighs 20.5  
2 oz!!! WTF !!!!”<sup>15</sup>

- 3 • “3 oz over stated weight”

4 By Desiree Childers on March 26, 2018 (Style Name -10/17 oz)

5 “I searched for a 27in -10 for my 7 year old. I ordered this Rawlings 5150  
6 as soon as I found a 27in in stock. When it arrived, it felt really heavy for  
7 its size, so we weighed it. It actually weighs 20 ounces. A full 3 ounces  
8 over its stated weight. I can understand if it was slightly different from its  
9 stated weight, but 3 ounces?!? It should have been marketed as a -8, and I  
10 would have kept on looking for a light bat.”<sup>16</sup>

- 11 • “nice bat, unfortunately there will be a lot of ...”

12 By William on March 25, 2018 (Style Name -11/16 oz)

13 “Over 2oz heavier than listed!! According to Rawlings, most USA bats are  
14 heavy. I weighed the 5150 -10 & -11; both were over 2oz heavier than  
15 weight stamped on the bat. Otherwise, nice bat, unfortunately there will  
16 be a lot of crappy ‘at bats’ because of this deception.”<sup>17</sup>

17 37. Even on Rawlings’ own website, consumers have expressed concern  
18 that the Rawlings 2018 5150 bat feels heavier than it should. An anonymous  
19 consumer posted eight months ago, under the title, “Bat has good pop but feels a lot  
20 heavier,” as follows: “Bat is advertised at 16 oz not happy with the actual weight”.  
21 The consumer included a picture of the bat on a scale showing that the bat weighed  
22 in at 18.47 ounces, “2.47 oz heavier”. The Rawlings consumer thus indicated, “No,

23 \_\_\_\_\_  
24 <sup>15</sup> [https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_6?ie=UTF8&reviewerType=all\\_reviews&sortBy=recent&pageNumber=6#R2G5ALHYRG3O49](https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm_cr_getr_d_paging_btm_6?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=6#R2G5ALHYRG3O49) (last visited October 18, 2018).

25 \_\_\_\_\_  
26 <sup>16</sup> [https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_6?ie=UTF8&reviewerType=all\\_reviews&sortBy=recent&pageNumber=6#R2G5ALHYRG3O49](https://www.amazon.com/Rawlings-Alloy-Barrel-Baseball-16/product-reviews/B074C442VY/ref=cm_cr_getr_d_paging_btm_6?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=6#R2G5ALHYRG3O49) (last visited October 18, 2018).

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

1 I do not recommend this product.”<sup>18</sup>

2 38. Just like these other consumers who also appear to have weighed their  
3 Rawlings bats and learned that they are not the weight represented by Rawlings,  
4 including through its provision of the weight information to third-party online  
5 retailers, Plaintiff’s 5150 bat also is not the weight represented as advertised by  
6 [www.baseballsavings.com](http://www.baseballsavings.com) through the specifications provided to it by Rawlings.

7 **CLASS ALLEGATIONS**

8 39. Pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil  
9 Procedure, Plaintiff brings this action individually and on behalf of a class of  
10 consumers who purchased in the United States, either in a retail store, on Rawlings’  
11 website, or through a third-party website that is an authorized dealer of Rawlings’  
12 products, any model of Rawlings baseball bat during the applicable limitations  
13 period that was misrepresented or falsely labeled as being a different weight than it  
14 actually is (the “Class”).

15 40. Plaintiff also brings this action individually and on behalf of a subclass  
16 of consumers who purchased in California, either in a retail store, on Rawlings’  
17 website, or through a third-party website that is an authorized dealer of Rawlings’  
18 products, any model of Rawlings baseball bat during the applicable limitations  
19 period that was misrepresented or falsely labeled as being a different weight than it  
20 actually is (the “California Subclass”). The Class and California Subclass are  
21 sometimes collectively referred to hereinafter as the “Class.”

22 41. Excluded from the Class are Defendant, its affiliates, predecessors,  
23 successors, officers, directors, agents, servants and employees and the immediate  
24 families of such persons.

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<sup>18</sup> <https://www.rawlings.com/product/US8511.html> (last visited October 18, 2018).

1 **Numerosity**

2 42. The members of the Class are too numerous for joinder to be  
3 practicable. There are at least thousands of purchasers of Rawlings bats, as well as  
4 the 5150 bats, in the United States and State of California.

5 **Commonality**

6 43. There is a well-defined community of interest in the relevant questions  
7 of law and fact among members of the Class. Common questions of law and fact  
8 predominate over any questions affecting individual Class members, including, but  
9 not limited to:

- 10 a. Whether Rawlings misrepresented, falsely advertised and/or falsely  
11 warranted the actual weight of its bats?
- 12 b. Whether consumers would find the difference between the weight as  
13 represented and the actual weight material?
- 14 c. Whether the conduct of Rawlings violated the California Consumers  
15 Legal Remedies Act as to the California Subclass?
- 16 d. Whether the conduct of Rawlings violated the California Unfair  
17 Competition Law under Section 17200 as to the California Subclass?
- 18 e. Whether the conduct of Rawlings violated the California False  
19 Advertising Law under Section 17500 as to the California Subclass?
- 20 f. Whether Rawlings has been unjustly enriched?
- 21 g. Whether Rawlings breached its express warranty to consumers?
- 22 h. Whether Rawlings breached its implied warranty to consumers?
- 23 i. Whether Rawlings should be enjoined from selling its bats with its  
24 current representation/label about their weight?
- 25 j. For each claim, what is the proper measure of damages?
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1 **Typicality**

2 44. Plaintiff has the same interests in this matter as all other members of  
3 the Class since he relied upon and was deceived by the same misrepresentation.

4 45. If members of the Class brought individual cases, they would require  
5 proof of the same material and substantive facts and would seek the same relief.

6 46. The claims of Plaintiff and the Class members share a common nucleus  
7 of operative facts and originate from the same conduct by Rawlings.

8 **Adequacy Of Representation**

9 47. Plaintiff will diligently represent the interests of the Class. The  
10 interests of Plaintiff are sufficiently aligned with the interests of the other Class  
11 members such that he will have no conflicts with the interests of the Class and will  
12 be an adequate representative.

13 48. Counsel for Plaintiff is experienced in consumer class action litigation  
14 and will prosecute the action with skill and diligence.

15 **Superiority**

16 49. The prosecution of separate actions by individual Class members would  
17 create a risk of inconsistent or varying adjudications which would establish  
18 incompatible standards of conduct for the parties opposing the Class. Such  
19 incompatible standards of conduct and varying adjudications on the same essential  
20 facts, proof and legal theories would also create and allow the existence of  
21 inconsistent and incompatible rights within the Class.

22 50. Moreover, a class action is superior to other methods for the fair and  
23 efficient adjudication of the controversies raised in this Complaint because:

24 a. Individual claims by the Class members would be impracticable as the  
25 costs of pursuit would far exceed what any one Class member has at stake;

26 b. Plaintiff is unaware of any other individual litigation that has been  
27 commenced over the controversies alleged in this Complaint and individual Class  
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1 members are unlikely to have an interest in separately prosecuting and controlling  
2 individual actions;

3 c. The concentration of litigation of these claims in one forum will achieve  
4 efficiency and promote judicial economy; and

5 d. The proposed class action is manageable.

6 51. Defendant has acted and failed to act in a uniform manner on grounds  
7 generally applicable to Plaintiff and the other members of the Class in  
8 misrepresenting the weight of its baseball bats so that final declaratory and  
9 injunctive relief as requested herein are appropriate with respect to the Class as a  
10 whole.

11 52. Therefore, class treatment of Plaintiff's claims is appropriate and  
12 necessary.

13 **COUNT I**

14 **VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.**

15 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA SUBCLASS)**

16 53. Plaintiff repeats and realleges each and every allegation contained in  
17 paragraphs 1-52 above as if fully set forth herein.

18 54. Plaintiff Sotelo has standing to pursue this claim under California's  
19 Unfair Competition Law ("UCL") because he suffered an injury-in-fact and lost  
20 money as a result of Defendant's practices. Specifically, had Plaintiff known the  
21 truth about the weight of the 5150 bat, that it was not as represented on  
22 [www.baseballsavings.com](http://www.baseballsavings.com) through information provided by Rawlings, he would not  
23 have purchased the bat, or would have paid less for it.

24 55. In making his purchase decision, Sotelo relied on the representation  
25 contained on the website [www.baseballsavings.com](http://www.baseballsavings.com), which was provided to that  
26 online retailer by Rawlings (including by virtue of being stated on the bat by  
27 Rawlings), that the 5150 bat's weight was 16 ounces (with a corresponding weight  
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1 drop of -11). However, the bat does not weigh 16 ounces.

2 56. Rawlings' act of misrepresenting the weight of its bats, including the  
3 5150 bat, either on the label of the bat, on its website, or by providing specifications  
4 to third-party online retailers, as a materially different weight than what they  
5 actually are constitutes a course of unfair conduct within the meaning of Cal. Civ.  
6 Code § 17200, *et seq.*

7 57. The conduct of Defendant harms the interests of consumers and market  
8 competition. There is no valid justification for Defendant's conduct. The consumer  
9 injury is substantial because, for the reasons discussed hereinabove, the weight of  
10 the bat is so critical to the purchase decision. Consumers could not reasonably have  
11 avoided the injury as they have no reasonable way to weigh the bat themselves prior  
12 to purchase.

13 58. Defendant engaged in unlawful business acts and practices by violating  
14 the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* and § 17500,  
15 Cal. Bus. & Prof. Code, as alleged in Counts II and III below.

16 59. Defendant engaged in fraudulent business acts or practices and  
17 deceptive, untrue or misleading advertising under § 17200 by knowingly  
18 misrepresenting Rawlings bats as weighing a materially different amount than they  
19 actually weigh, as described above, either directly to consumers or by providing the  
20 specifications to third-party on-line retailers who then provide them to consumers on  
21 their websites (as in Plaintiff's situation). Such practices are devoid of utility and  
22 outweighed by the gravity of harm to Sotelo and the California Subclass who lost  
23 money by paying for the Rawlings bats believing they were the represented weight  
24 when they in fact were not.

25 60. Plaintiff, the California Subclass and members of the public were likely  
26 to be deceived by a false weight in purchasing the bat, inasmuch as the weight of the  
27 bat is a significant factor in such a purchase.

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1       61. Defendant knew or should have known that the weight of the bats that  
2 it stated on the label, provided on its website, and provided to third-party online  
3 retailers to post on their websites, was false and misleading in that as the  
4 manufacturer and distributor of the bats, it determines the weight of each bat and  
5 how to label it. As the manufacturer and distributor of the bats at issue, Defendant  
6 was in control of the label placed on the bats and the quality control processes to  
7 ensure the weights were accurately labeled.

8       62. Each of Defendant's unfair, unlawful, and  
9 fraudulent/deceptive/misleading practices enumerated above was the direct and  
10 proximate cause of financial injury to Sotelo and the California Subclass.  
11 Defendant has unjustly benefitted as a result of its wrongful conduct. Sotelo and  
12 California Subclass members are accordingly entitled to have Defendant disgorge  
13 and restore to Sotelo and California Subclass members all monies wrongfully  
14 obtained by Defendant as a result of the conduct as alleged herein.

15       63. Plaintiff Sotelo is also seeking injunctive relief on behalf of himself and  
16 the California Subclass. Sotelo's son continues to play baseball and Sotelo will  
17 continue to regularly visit stores or websites to buy bats for his son as he grows.  
18 There is a threat of future harm because as Sotelo's son continues to grow, Plaintiff  
19 must purchase new bats for him so that his son can play with a bat that is the  
20 appropriate weight for his size. Plaintiff would buy a Rawlings 5150 bat (and other  
21 Rawlings bats) this year and in future years if Rawlings would correctly identify the  
22 weight on the bat, and also inform third-party online retailers of the correct weight,  
23 so that Plaintiff's son does not have the problem of trying to use a bat that is too  
24 heavy or the wrong weight for him. Plaintiff is currently unable to rely on the  
25 accuracy of the labeling and advertising of the weights. He will purchase Rawlings  
26 bats in the future if they are correctly labeled but without injunctive relief to ensure  
27 the accuracy of the labeling and advertising there is still a risk of future harm.

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1 **COUNT II**

2 **VIOLATION OF CAL. BUS. & PROF. CODE § 17500, et seq.**

3 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA SUBCLASS)**

4 64. Plaintiff repeats and realleges each and every allegation contained in  
5 paragraphs 1-52 above as if fully set forth herein.

6 65. California Bus. and Prof. Code § 17500 prohibits untrue or misleading  
7 advertising.

8 66. Plaintiff Sotelo has standing to pursue this claim under § 17500  
9 because he suffered an injury-in-fact and lost money as a result of Defendant's  
10 practices. Specifically, had Plaintiff known the truth about the weight of the 5150  
11 bat, that it was not as represented on [www.baseballsavings.com](http://www.baseballsavings.com) through information  
12 provided by Rawlings, he would not have purchased the bat, or would have paid less  
13 for it.

14 67. In making his purchase decision, Sotelo relied on the representation  
15 contained on the website [www.baseballsavings.com](http://www.baseballsavings.com), which was provided to that  
16 online retailer by Rawlings (including by being stated on the bat by Rawlings), that  
17 the 5150 bat's weight was 16 ounces (with a corresponding weight drop of -11).  
18 However, the bat does not weigh 16 ounces.

19 68. Advertising and labeling the Rawlings bats as being of a certain weight  
20 when they are actually of a materially different weight constitutes a deceptive,  
21 untrue, and misleading advertising practice by Defendant under § 17500.

22 69. Defendant engaged in fraudulent business practices by misrepresenting,  
23 either directly to consumers or by providing the specifications to third-party on-line  
24 retailers who then provide them to consumers on their websites (as in Plaintiff's  
25 situation), the weight of its bats which was known to it, or which by the exercise of  
26 reasonable care should have been known to it. As the manufacturer and distributor  
27 of the bats, Rawlings determines the weight of each bat and how to label it. As the  
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1 manufacturer and distributor of the bats at issue, Defendant was in control of the  
2 label placed on the bats and the quality control processes to ensure the weights were  
3 accurately labeled.

4 70. Such practices are devoid of utility and outweighed by the gravity of  
5 harm to Sotelo and the California Subclass who lost money by paying for the  
6 Rawlings bats that were mislabeled as to their actual weight.

7 71. Plaintiff and the California Subclass and members of the public were  
8 likely to be deceived by a false weight in purchasing the bat, inasmuch as the weight  
9 of the bat is a significant factor in such a purchase.

10 72. Each of Defendant's practices of untrue or misleading advertising  
11 enumerated above was the direct and proximate cause of financial injury to Sotelo  
12 and the California Subclass. Defendant has unjustly benefitted as a result of its  
13 wrongful conduct. Sotelo and California Subclass members are accordingly entitled  
14 to have Defendant disgorge and restore to Sotelo and California Subclass members  
15 all monies wrongfully obtained by Defendant as a result of the conduct as alleged  
16 herein.

17 73. Plaintiff Sotelo is also seeking injunctive relief on behalf of himself and  
18 the California Subclass. Sotelo's son continues to play baseball and Sotelo will  
19 continue to regularly visit stores or websites to buy bats for his son as he grows.  
20 There is a threat of future harm because as Sotelo's son continues to grow, Plaintiff  
21 must purchase new bats for him so that his son can play with a bat that is the  
22 appropriate weight for his size. Plaintiff would buy a Rawlings 5150 bat (and other  
23 Rawlings bats) this year and in future years if Rawlings would correctly identify the  
24 weight on the bat, and also inform third-party online retailers of the correct weight,  
25 so that Plaintiff's son does not have the problem of trying to use a bat that is too  
26 heavy or the wrong weight for him. Plaintiff is currently unable to rely on the  
27 accuracy of the labeling and advertising of the weights. He will purchase Rawlings  
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1 bats in the future if they are correctly labeled but without injunctive relief to ensure  
2 the accuracy of the labeling and advertising there is still a risk of future harm.

3 **COUNT III**

4 **VIOLATION OF CAL. CIV. CODE § 1750, et seq.**

5 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA SUBCLASS)**

6 74. Plaintiff repeats and realleges each and every allegation contained in  
7 paragraphs 1-52 above as if fully set forth herein.

8 75. The Consumers Legal Remedies Act (“CLRA”) was enacted to protect  
9 consumers against unfair and deceptive business practices. The CLRA applies to  
10 Defendant’s acts and practices because the Act covers transactions involving the  
11 sale of goods to consumers.

12 76. Plaintiff Sotelo and members of the California Subclass are  
13 “consumers” within the meaning of § 1761(d) of the California Civil Code, and they  
14 engaged in “transactions” within the meaning of §§ 1761(e) and 1770 of the  
15 California Civil Code, including the purchases of the Rawlings bats.

16 77. Defendant is a “person” under Cal. Civ. Code § 1761(c).

17 78. The Rawlings bats are “goods” under Cal. Civ. Code §1761(a).

18 79. Defendant’s unfair and deceptive business practices were intended to  
19 and did result in the sale of the Rawlings bats.

20 80. Defendant violated the CLRA by engaging in the following unfair and  
21 deceptive practices:

22 a) representing, either directly to consumers or by providing the  
23 specifications to third-party on-line retailers who then post the specifications  
24 on their websites, that Rawlings bats have characteristics, uses, or benefits  
25 that they do not have, in violation of §1770(a)(5);

26 b) representing, either directly to consumers or by providing the  
27 specifications to third-party on-line retailers who then post the specifications  
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1 on their websites, that Rawlings bats are of a particular standard, quality, or  
2 grade when they are not, in violation of § 1770(a)(7); and  
3 c) advertising, either directly to consumers or by providing the  
4 specifications to third-party on-line retailers who then post the specifications  
5 on their websites, Rawlings bats with the intent not to sell them as advertised,  
6 in violation of § 1770(a)(9).

7 81. In making his purchase decision, Sotelo relied on the representation  
8 contained on the website [www.baseballsavings.com](http://www.baseballsavings.com), which was provided to that  
9 online retailer by Rawlings (including by being stated on the bat by Rawlings), that  
10 the 5150 bat's weight was 16 ounces (with a corresponding weight drop of -11).  
11 However, the bat does not weigh 16 ounces.

12 82. If Sotelo and the California Subclass members had known that the  
13 Rawlings bats were not of the weight they were represented to be, they would not  
14 have purchased them at all or would not have purchased them at the prices they did.

15 83. Plaintiff and the California Subclass and members of the public were  
16 likely to be deceived by a false weight in purchasing the bat, inasmuch as the weight  
17 of the bat is a significant factor in such a purchase.

18 84. As a direct and proximate result of Defendant's conduct, Sotelo and the  
19 California Subclass suffered injury and damages in an amount to be determined at  
20 trial.

21 85. Pursuant to California Civil Code § 1782(a), on July 10, 2018, counsel  
22 for Sotelo sent Defendant a notice letter (attached hereto as Exh. A) via certified  
23 mail, return receipt requested, advising Defendant that it had violated the CLRA and  
24 must correct, repair, replace, or otherwise rectify the goods alleged to be in violation  
25 of § 1770 for himself and other similarly situated purchasers of Rawlings bats.

1       86. Defendant, through counsel, responded on August 9, 2018, but did not  
2 agree to take the remedial action requested by Plaintiff for himself and other  
3 similarly situated purchasers of Rawlings bats.

4       87. Plaintiff seeks monetary relief under the CLRA.

5       88. Plaintiff Sotelo is also seeking injunctive relief on behalf of himself and  
6 the California Subclass. Sotelo's son continues to play baseball and Sotelo will  
7 continue to regularly visit stores or websites to buy bats for his son as he grows.  
8 There is a threat of future harm because as Sotelo's son continues to grow, Plaintiff  
9 must purchase new bats for him so that his son can play with a bat that is the  
10 appropriate weight for his size. Plaintiff would buy a Rawlings 5150 bat (and other  
11 Rawlings bats) this year and in future years if Rawlings would correctly identify the  
12 weight on the bat, and also inform third-party online retailers of the correct weight,  
13 so that Plaintiff's son does not have the problem of trying to use a bat that is too  
14 heavy or the wrong weight for him. Plaintiff is currently unable to rely on the  
15 accuracy of the labeling and advertising of the weights. He will purchase Rawlings  
16 bats in the future if they are correctly labeled but without injunctive relief to ensure  
17 the accuracy of the labeling and advertising there is still a risk of future harm.

18       89. Sotelo therefore seeks injunctive and declaratory relief, damages,  
19 restitution, costs, attorneys' fees, and any other relief available under the CLRA.

20       90. Pursuant to section 1780(d) of the CLRA, Plaintiff filed, with his  
21 original complaint, an affidavit showing that this action was commenced in the  
22 proper forum.

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1 **COUNT IV**

2 **BREACH OF EXPRESS WARRANTY**

3 **(ON BEHALF OF PLAINTIFF AND THE CLASS OR, IN THE**  
4 **ALTERNATIVE, THE CALIFORNIA SUBCLASS)**

5 91. Plaintiff repeats and realleges each and every allegation contained in  
6 paragraphs 1-52 above as if fully set forth herein.

7 92. Plaintiff asserts this claim under California law or, in the alternative,  
8 Missouri law, on behalf of himself and the California Subclass. Plaintiff asserts this  
9 claim under the law of the state of purchase of the Rawlings bat(s) or, in the  
10 alternative, Missouri law, on behalf of himself and the Class.

11 93. Rawlings was at all relevant times a merchant and a seller. The third-  
12 party online retailer [www.baseballsavings.com](http://www.baseballsavings.com), through which Plaintiff purchased  
13 the 5150 bat, is also a merchant and a seller as are all such third-party online  
14 retailers. When third-party online retailers sell Rawlings bats, they advertise and  
15 sell them using the information provided directly from Rawlings regarding the  
16 weight, which is stated by Rawlings right on the bat itself.

17 94. Plaintiff relied on the representation by Rawlings through  
18 [www.baseballsavings.com](http://www.baseballsavings.com) that the 5150 bat weighed 16 ounces. Had Plaintiff  
19 known the truth about the weight of the 5150 bat, *i.e.*, that it was not as represented  
20 by [www.baseballsavings.com](http://www.baseballsavings.com) through Rawlings, he would not have purchased the  
21 bat, or would have paid less for it.

22 95. The Rawlings bats are goods and Plaintiff and the Class and California  
23 Subclass members purchased the Rawlings bats in a consumer transaction.

24 96. Rawlings expressly warranted to all purchasers the weight of the bats,  
25 either directly, by placing the weight on the bats or on its own website, or by  
26 providing the weight of the bats to third-party online retailers who then posted that  
27 weight on their websites. This was a representation by Rawlings that the bats would  
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1 perform as per the stated weight and weight drop. Plaintiff and the other members  
2 of the Class and California Subclass, prior to making their purchases, relied on this  
3 express warranty that Rawlings' bats were of a certain weight and this formed a part  
4 of the basis of the bargain, as described above.

5 97. Because Rawlings stated the weight of the bat directly on the bat or on  
6 its own website, or provided information about the weight of the bat to third-party  
7 online retailers who provided it on their websites, Rawlings communicated directly  
8 to purchasers, including Plaintiff and the members of the Class and California  
9 Subclass, prior to their purchases.

10 98. Rawlings breached its express warranty to Plaintiff and the other  
11 members of the Class and California Subclass because its bats are of a materially  
12 different weight than represented by Rawlings, either directly to Plaintiff and the  
13 Class and California Subclass or through third-party online retailers. As such, they  
14 do not perform as indicated such as they would if the weights were accurate.

15 99. Plaintiff's 5150 bat weighs approximately 18.6 ounces, materially  
16 more than the 16 ounces as represented by Rawlings directly on the bat and as stated  
17 on [www.baseballsavings.com](http://www.baseballsavings.com), which information was provided by Rawlings to that  
18 third-party online retailer. The Class and California Subclass also purchased  
19 Rawlings bats that were not the weight they were represented to be.

20 100. As a direct and proximate result of Defendant's conduct, Sotelo and the  
21 Class and California Subclass suffered injury and damages in an amount to be  
22 determined at trial.

23 101. On July 10, 2018, counsel for Plaintiff Sotelo sent Defendant a notice  
24 letter via certified mail, return receipt requested, advising Defendant that it had  
25 breached its warranty under California law and requested appropriate class wide  
26 relief.

27 102. Defendant, through counsel, responded on August 9, 2018, but did not  
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1 agree to take the remedial action requested by Plaintiff for himself and other  
2 similarly situated purchasers of Rawlings bats.

3 103. As a result, Plaintiff Sotelo and the members of the Class and  
4 California Subclass are entitled to damages in an amount to be determined at trial.

5 **COUNT V**

6 **BREACH OF IMPLIED WARRANTY**

7 **(ON BEHALF OF PLAINTIFF AND THE CLASS OR, IN THE**  
8 **ALTERNATIVE, THE CALIFORNIA SUBCLASS)**

9 104. Plaintiff repeats and realleges each and every allegation contained in  
10 paragraphs 1-52 above as if fully set forth herein.

11 105. Plaintiff asserts this claim under California law or, in the alternative,  
12 Missouri law, on behalf of himself and the California Subclass. Plaintiff asserts this  
13 claim under the law of the state of purchase of the Rawlings bat(s) or, in the  
14 alternative, Missouri law, on behalf of himself and the Class.

15 106. Rawlings was at all relevant times a merchant and a seller. The third-  
16 party online retailer [www.baseballsavings.com](http://www.baseballsavings.com), through which Plaintiff purchased  
17 the 5150 bat, is also a merchant and a seller as are all such third-party online  
18 retailers. When third-party online retailers sell Rawlings bats, they advertise and  
19 sell them using the information provided directly from Rawlings regarding the  
20 weight, which is stated by Rawlings right on the bat itself.

21 107. The Rawlings bat are goods and Plaintiff and the Class and California  
22 Subclass members purchased the Rawlings bats in a consumer transaction.

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

26 109. Rawlings breached its implied warranties to Plaintiff and the Class and  
27 California Subclass because the Rawlings bats were not the weight stated on the bat,  
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1 on Rawlings' website, or on third-party online retailers' websites based on the  
2 weight information provided to such retailers by Rawlings and, as such, were not fit  
3 for their ordinary purpose, did not have adequate labeling, and did not conform to  
4 the promises or affirmations made. As alleged above, the weight of the bat is of  
5 material significance to purchasers of Rawlings bats and even a one-ounce  
6 difference is important to such purchasers.

7 110. Defendant's implied warranties extend to Plaintiff and the Class and  
8 California Subclass because Defendant knew the purposes for which Plaintiff and  
9 the Class and California Subclass were purchasing the Rawlings bats and Defendant  
10 manufactured the Rawlings bats for those purposes. Defendant knew that Plaintiff  
11 and the Class and California Subclass were making such purchases based upon,  
12 among other things, the weight of the bat. In fact, Defendant manufactures  
13 Rawlings' bats in one-ounce increments because it knows that every ounce matters  
14 in the weight of the bat. Rawlings sells directly to consumers, or authorizes dealers  
15 online and in retail stores to sell, its bats in such weight increments and knows that  
16 consumers rely on its expertise to properly, accurately and truthfully present the  
17 weight of its bats, either directly to consumers or to third-party online retailers who  
18 then provide that information to consumers, including Plaintiff and the Class and  
19 California Subclass.

20 111. Because Rawlings stated the weight of the bat directly on the bat or on  
21 its own website, or provided information about the weight of the bat to third-party  
22 online retailers who provided it on their websites, Rawlings communicated directly  
23 to purchasers, including Plaintiff and the members of the Class and California  
24 Subclass, prior to their purchases. Defendant knew that consumers, including  
25 Plaintiff, the Class and the California Subclass, were the ultimate consumers and the  
26 targets of the third-party online retailers, who were authorized to sell its bats, and  
27 intended consumers to rely on the representations as to the weight of the bats and  
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1 they were thus the intended beneficiaries of the implied warranties.

2 112. Plaintiff relied on the representation on [www.baseballsavings.com](http://www.baseballsavings.com),  
3 which was based on weight information provided by Rawlings, that the 5150 bat  
4 weighed 16 ounces. Had Plaintiff known the truth about the weight of the 5150 bat,  
5 i.e., that it was not as represented by [www.baseballsavings.com](http://www.baseballsavings.com) through Rawlings,  
6 he would not have purchased the bat, or would have paid less for it.

7 113. Plaintiff and the Class and California Subclass did not receive bats as  
8 represented to them either directly by Rawlings or through third-party retailers  
9 based on weight information provided by Rawlings because the weights were not  
10 accurate and thus were not fit for their ordinary purpose, i.e., the particular purpose  
11 for which they were sold. Plaintiff purchased a 5150 bat that was not as warranted  
12 because it weighs materially more than 16 ounces as represented on  
13 [www.baseballsavings.com](http://www.baseballsavings.com) which information was provided by Rawlings.

14 114. Thus, Defendant breached its implied warranties to Plaintiff and the  
15 Class and California Subclass. As a direct and proximate result of such breach of  
16 implied warranties by Defendant, Plaintiff Sotelo and the members of the Class and  
17 California Subclass suffered actual monetary damages in an amount to be  
18 determined at trial.

19 **COUNT VI**

20 **UNJUST ENRICHMENT**

21 **(IN THE ALTERNATIVE AND ON BEHALF OF PLAINTIFF AND THE**  
22 **CLASS OR, IN THE ALTERNATIVE, THE CALIFORNIA SUBCLASS)**

23 115. Plaintiff repeats and realleges each and every allegation contained in  
24 paragraphs 1-52 above as if fully set forth herein.

25 116. Plaintiff asserts this claim under California law or, in the alternative,  
26 Missouri law, on behalf of himself and the California Subclass. Plaintiff asserts this  
27 claim under the law of the state of purchase of the Rawlings bat(s) or, in the  
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1 alternative, Missouri law, on behalf of himself and the Class.

2 117. This claim is asserted in the alternative should there be no adequate  
3 remedies at law.

4 118. In making his purchase decision, Sotelo relied on the representation  
5 contained on the website [www.baseballsavings.com](http://www.baseballsavings.com), which was provided to that  
6 online retailer by Rawlings (including by being stated on the bat by Rawlings), that  
7 the 5150 bat's weight was 16 ounces (with a corresponding weight drop of -11).  
8 However, the bat does not weigh 16 ounces.

9 119. Plaintiff and the Class and California Subclass members conferred a  
10 benefit on Defendant by purchasing Rawlings bats, either directly, through retailers  
11 or through third-party online retailers, that were not the weight represented on the  
12 bat and advertised. Defendant is aware that customers purchase bats based at least  
13 in part on the weight the bat is represented to be.

14 120. Defendant's retention of the monies paid for a bat that is not the weight  
15 it is represented and advertised to be by Defendant, either directly or through third-  
16 party online retailers via information provided by Defendant to such retailers,  
17 violates the principles of justice, equity and good conscience.

18 121. Plaintiff paid money, as set forth above, to purchase a 5150 bat that  
19 weighed 16 ounces when it in fact did not weigh 16 ounces but weighed  
20 approximately 18.6 ounces, which is materially more. Similarly, Class and  
21 California Subclass members paid money for bats that were not the weight that they  
22 were represented to be, either directly by Defendant or through third-party online  
23 retailers via information provided by Defendant to such retailers.

24 122. It would be inequitable and unjust for Defendant to retain the benefit of  
25 such monies obtained from Plaintiff and the Class and California Subclass because  
26 Defendant misrepresented the weight of the Rawlings bats, either directly or through  
27 third- party online retailers via information provided by Defendant to such retailers.

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1 123. As a result, Sotelo and the members of the Class and California  
2 Subclass are entitled to restitution from Defendant in the amount by which  
3 Defendant was unjustly enriched through sales of its Rawlings bats that were  
4 misrepresented as to their weights.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff, on behalf of himself and all others similarly  
7 situated, prays for judgment as follows:

- 8 (a) Declaring this action to be a proper class action and certifying Plaintiff as the  
9 representative of the Class and California Subclass;
- 10 (b) Appointing Plaintiff's attorneys as Class Counsel for the Class and California  
11 Subclass;
- 12 (c) Awarding restitution and monetary damages as appropriate;
- 13 (d) Ordering injunctive and declaratory relief as appropriate;
- 14 (e) Awarding reasonable attorneys' fees, costs and expenses incurred in this  
15 action; and
- 16 (f) Granting such other and further relief as the Court may deem just and proper.

17 **JURY DEMAND**

18 Plaintiff requests a trial by jury of all claims so triable.  
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Dated: January 31, 2019

Respectfully submitted,

By: /s/ David R. Shoop  
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Thomas S. Alch (136860)  
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Counsel for Plaintiff and the Class

# EXHIBIT A



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MILLBROOK, NEW YORK  
GREAT NECK, NEW YORK  
WEST PALM BEACH, FLORIDA  
FT. LAUDERDALE, FLORIDA

July 10, 2018

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

Rawlings Sporting Goods Company, Inc.  
510 Maryville University Drive, Suite 110  
St. Louis, MO 63141

Attn: General Counsel

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

Dear Sir or Madam:

We represent Mr. Rich Sotello, a purchaser of a Rawlings Youth 5150 USA baseball bat as well as a putative class of purchasers of Rawlings baseball bats, marketed and sold by Rawlings Sporting Goods Company, Inc. (“Rawlings” or “the Company”). Our client is a citizen of California and he believes that the Company is engaging in, *inter alia*, unfair methods of competition and deceptive and misleading consumer practices in connection with the marketing and sale of the Company’s products, specifically its baseball bats intended for consumers.

Rawlings sells baseball bats, including the kind purchased by Mr. Sotello, which are intended for purchase by consumers who use them recreationally, in amateur sports competitions, and in other scenarios in which the advertised weight is of material importance to the consumer. Weight is of particular importance in the sale of baseball bats because small variations (especially in the sale of children’s bats) can greatly affect the consumer’s performance. Additionally, bats which vary significantly from their advertised weight can be a safety hazard, both to the consumer and to other players and bystanders.

In Mr. Sotello’s case, he purchased for his son a 27-inch bat with an advertised -11 drop, meaning that it was advertised to weigh 16 ounces (or 11 ounces fewer than the number of inches in length). Instead, Mr. Sotello’s bat weighs 18.6 ounces.

McLaughlin & Stern, LLP

The Company's weight representations are routinely false. The Company is either aware of this misleading advertising or should have been aware of it as part of the quality control and marketing process. Accordingly, we submit that Rawlings has violated and continues to violate: (1) Cal. Civil Code §§ 1750, *et seq.* (the "CLRA"), which provides that "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful" (CLRA § 1770); (2) Cal. Business and Professions Code §§ 17200, *et seq.* (the "UCL"), which prohibits any "unlawful," "unfair" or "fraudulent" business act or practice and any false or misleading advertising; and (3) Cal. Business and Professions Code §§ 1750, *et seq.*, in that misrepresenting that its bats are of a specific, advertised weight when they are not violates California Civil Code section 1770(a) in particular by:

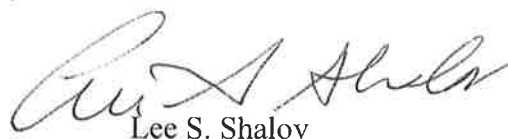
- Representing that [the] services have ... approval, characteristics, . . . uses [or] benefits which they do not have;
- Representing that [the] services ... are of a particular standard, quality or grade ... if they are of another; and
- Advertising services ... with intent not to sell them as advertised.

This letter also serves as notice of the Company's breach of warranty, pursuant to Cal. U. Comm. Code §2607(3).

This letter is being served on behalf of our client and all similarly situated consumers, pursuant to CLRA § 1782(a), who hereby demand that Rawlings: (1) engage in corrective advertising concerning the unfair and/or deceptive acts or practices alleged herein; (2) cease and desist from the unlawful conduct described herein; and (3) reimburse our client and all other similarly situated consumers for the amount that they paid for these services that were sold using unfair and/or deceptive acts or practices. Please comply with this demand within 30 days. We stand ready to discuss a reasonable resolution of this matter on terms acceptable to our client and similarly situated consumers.

If you have any questions, require any additional information or would like to discuss these matters, please do not hesitate to contact me.

Very truly yours,



Lee S. Shalov

LS/kmh