

David R. Shoop (220576)  
[david.shoop@shooplaw.com](mailto:david.shoop@shooplaw.com)  
**SHOOP, A PROFESSIONAL CORPORATION**  
350 S. Beverly Drive, Suite 330  
Beverly Hills, CA 90212  
Tel: (310) 277-1700  
Fax: (310) 277-8500

Janine L. Pollack  
[pollackj@thesultzerlawgroup.com](mailto:pollackj@thesultzerlawgroup.com)  
Adam Gonnelli  
[gonnellia@thesultzerlawgroup.com](mailto:gonnellia@thesultzerlawgroup.com)  
**THE SULTZER LAW GROUP P.C.**  
351 West 54<sup>th</sup> Street  
Suite 1C  
New York, NY 10019  
Tel: (212) 969-7810  
Fax: (888) 749-7747

Lee S. Shalov  
[lshalov@mclaughlinstern.com](mailto:lshalov@mclaughlinstern.com)  
Jason S. Giaimo  
[jgiaimo@mclaughlinstern.com](mailto:jgiaimo@mclaughlinstern.com)  
**MCLAUGHLIN & STERN LLP**  
260 Madison Avenue  
New York, New York 10016  
Tel.: (212) 448-1100  
Fax: (212) 448-0066

Counsel for Plaintiff and the Class (Additional Counsel listed on Signature Page)

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

RICHARD SOTELO, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

RAWLINGS SPORTING GOODS  
COMPANY, INC.,

Defendant.

CLASS ACTION COMPLAINT  
FOR DAMAGES &  
INJUNCTIVE RELIEF

1. Violation of the California  
Unfair Competition Law  
(Cal. Bus. & Prof. Code  
§ 17200, *et seq.*)
2. Violation of the California  
False Advertising Law  
(Cal. Bus. & Prof. Code  
§ 17500, *et seq.*)
3. Violation of the  
Consumers Legal  
Remedies Act (Cal. Civ.  
Code § 1750, *et seq.*)
4. Breach of Express  
Warranty
5. Breach of Implied  
Warranty
6. Unjust Enrichment

**INTRODUCTION**

1  
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.

6 2. Rawlings manufactures, distributes and sells youth baseball bats that  
7 are advertised and labeled as being a specific length in inches and weight in ounces.  
8 Purchasers of these Rawlings bats rely on those representations as the size and  
9 weight are crucial to the decision as to which bat to buy. This class action arises out  
10 of the uniform misrepresentations by Rawlings regarding the weights of its baseball  
11 bats. If, unbeknownst to the purchaser, a bat is not the weight at which it is  
12 represented, it can negatively affect performance. It can even cause injury to the  
13 user and other players.

14 3. On November 27, 2017, Plaintiff purchased for his son a 2018  
15 Rawlings Youth 5150 USA baseball bat (“5150 bat”), which was labeled and  
16 advertised as being 27 inches long and weighing 16 ounces (which means it is a -11  
17 weight drop). However, the 5150 bat purchased by Plaintiff actually weighs  
18 approximately 18.6 ounces, a 2.6 ounce weight difference which was material to  
19 Plaintiff in choosing to purchase the bat. In fact, as Rawlings knows and advertises,  
20 any weight difference for the Rawlings bats is material for all purchasers of its bats.

21 4. Plaintiff relied on the representation by Rawlings that the 5150 bat  
22 weighed 16 ounces. Had Plaintiff known the truth about the weight of the 5150 bat,  
23 i.e., that it was not as represented by Rawlings, he would not have purchased the bat,  
24 or would have paid less for it.

25 5. Plaintiff seeks redress for himself and all others similarly situated who  
26 purchased Rawlings bats that were falsely labeled with an incorrect weight.  
27 Plaintiff seeks equitable relief, including injunctive and declaratory relief, as well as  
28

1 all applicable equitable and actual damages under the law, and reasonable attorneys'  
2 fees and costs.

### 3 **JURISDICTION AND VENUE**

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

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

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

### 18 **PARTIES**

19 9. Plaintiff Richard Sotelo is a citizen of CA and a resident of Canyon  
20 Country, CA, which lies within this District.

21 10. Defendant Rawlings is a manufacturer, marketer and seller of sporting  
22 goods. Rawlings is headquartered in Town and Country, Missouri. It has been in  
23 business since 1887.<sup>1</sup> In or about July 2018, Rawlings was acquired from Newell  
24 Brands by Los Angeles-based private equity firm Seidler Equity Partners and Major  
25 League Baseball.<sup>2</sup> Rawlings' products include the youth baseball bats at issue in

---

26 <sup>1</sup> <https://www.rawlings.com/about/about-company.html> (last visited October 18, 2018).

27 <sup>2</sup> [https://www.stltoday.com/business/local/st-louis-county-based-rawlings-sold-to-group-](https://www.stltoday.com/business/local/st-louis-county-based-rawlings-sold-to-group-that-includes/article_9695321a-a1e5-57ce-aeb9-72abe9fa19fa.html#ncms-source=infinity-scroll-)  
28 [that-includes/article\\_9695321a-a1e5-57ce-aeb9-72abe9fa19fa.html#ncms-source=infinity-scroll-](https://www.stltoday.com/business/local/st-louis-county-based-rawlings-sold-to-group-that-includes/article_9695321a-a1e5-57ce-aeb9-72abe9fa19fa.html#ncms-source=infinity-scroll-)

1 this matter, which are sold online (through its own website, [www.rawlings.com](http://www.rawlings.com), and  
2 other web-based retailers like [www.baseballsavings.com](http://www.baseballsavings.com) and Amazon), and in retail  
3 stores located in California and all over the country.

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

### 9 **SUBSTANTIVE ALLEGATIONS**

10 12. Each Rawlings bat, including the 5150 bat, is labeled and advertised as  
11 being a specific length and weight. However, Rawlings bats are not the weight that  
12 they are represented to be by Rawlings, which constitutes a material  
13 misrepresentation because the weight of a bat is critical to the purchase decision.

14 13. The Rawlings website states, under the heading “Sizing”: “Choosing  
15 the right-sized bat is important to a player’s performance and development. Players  
16 with less experience should start with lighter bats for better swing control. More  
17 experienced players should use a heavier bat to help maximize power. A bat that is  
18 too heavy will dramatically reduce swing speed; if a bat is too light, the player could  
19 miss out on the extra force that a heavier bat can generate.”<sup>3</sup>

20 14. The Rawlings website further states, under the heading “Weight”: “Bat  
21 weight is measured in ounces (oz.)” and explains, under the heading “Weight Drop”:  
22 “Weight drop = bat length (in.) – bat weight (oz.)”. It continues: “For example, a  
23 32-inch, 22-ounce bat would have a drop weight of -10. Typically, the higher the  
24 competition or league level, the lesser the weight drop. A lesser weight drop means

---

25 [summary-siderail-latest](http://www.roi-nj.com/2018/07/02/industry/newell-wraps-up-sales-of-waddington-rawlings-units/) (last visited October 18, 2018); [http://www.roi-](http://www.roi-nj.com/2018/07/02/industry/newell-wraps-up-sales-of-waddington-rawlings-units/)  
26 [nj.com/2018/07/02/industry/newell-wraps-up-sales-of-waddington-rawlings-units/](http://www.roi-nj.com/2018/07/02/industry/newell-wraps-up-sales-of-waddington-rawlings-units/) (last visited  
27 October 18, 2018).

28 <sup>3</sup> <https://www.rawlings.com/bats/bat-guide/> (last visited October 18, 2018).

1 the bat feels heavier, so a -5 bat will feel heavier than a -10 bat.”<sup>4</sup>

2 15. As the Rawlings website makes clear, the weight of a bat is critical to  
3 bat purchasers making a bat purchase. The fact that the Rawlings bats come in  
4 various sizes that are only one inch and only one ounce apart demonstrates that even  
5 a single ounce difference is material to a purchase decision. For example, on  
6 Rawlings’ website, the 2018 5150 USA Baseball Bat comes in the following sizes  
7 with a -11 drop: 27 inch/16 oz; 28 inch/17 oz; 29 inch/18 oz; and 30 inch/19 oz.<sup>5</sup>  
8 Similarly, on Rawlings’ website, the 2018 5150 USA Baseball Bat comes in the  
9 following sizes with a -10 drop: 27 inch/17 oz; 28 inch/18 oz. In other words,  
10 every ounce matters.<sup>6</sup>

11 16. Similarly, as the Rawlings website further recognizes, the weight drop  
12 is also a critical factor in choosing a bat. Because the weight drop is a function of  
13 the length less the weight, if the weight is inaccurate for the bat so, too, will be the  
14 weight drop. Because Rawlings misrepresents the weights of its bats, the weight  
15 drops are also misrepresented.

16 17. Consumers, like Plaintiff Sotelo, rely on Rawlings’ representations  
17 about the weight of baseball bats. Such consumers use the bats recreationally, in  
18 amateur sports competitions, and in other scenarios in which the advertised weight  
19 is of material importance to the consumer.

20 18. The weight of the bat affects everything the player does, including bat  
21 speed, bat control, type and angle of swing, exit velocity, batting stance, and  
22 approach to pitching.

23 19. The weight of the bat is especially important because of the risk of  
24 injury of using a bat that is too heavy for the player. The player may get tired faster

---

25  
26 <sup>4</sup> *Id.*

27 <sup>5</sup> <https://www.rawlings.com/product/US8511.html> (last visited October 18, 2018).

28 <sup>6</sup> <https://www.rawlings.com/product/US8510.html> (last visited October 18, 2018).

1 or strain muscles and ligaments. The bat could also be a danger to other players and  
2 bystanders.

3 20. In some youth leagues, the weight of the bat is specified, making its  
4 accuracy an important factor in the purchase decision.

5 21. Thus, even variation of one ounce can make a significant difference in  
6 performance, as recognized by Rawlings' website, *supra*, and consumers like  
7 Plaintiff Sotelo and the class shop for bats based in large part on their weight.

8 **Plaintiff Sotelo's Facts**

9 22. On November 27, 2017, Sotelo purchased a new 2018 5150 bat for a  
10 price of \$72.76, plus tax, for a total of \$78.04 on the website  
11 www.baseballsavings.com for his then 8-year old son, who plays youth baseball  
12 near their home in California.

13 23. Sotelo purchased the 5150 bat for personal, family, or household use.

14 24. The 5150 bat's label represents that it weighs 16 ounces. A picture of  
15 the label on Sotelo's 5150 bat is below:





1       25.       In making his purchase decision, Sotelo relied on the representations  
2 about the 5150 bat's weight being 16 ounces with a corresponding weight drop of -  
3 11.

4       26.       Sotelo purchased the 5150 bat for his son because he thought the  
5 relatively light weight would give his son better swing control, among other things.

6       27.       However, Sotelo noticed that his son did not have better control with  
7 the 5150 bat.

8       28.       In fact, Sotelo weighed the bat and it does not weigh 16 ounces as  
9 represented by Rawlings but rather it weighs approximately 18.6 ounces, around 2.6  
10 ounces more than labeled and advertised by Rawlings. A picture of Sotelo's 5150  
11 bat on the scale is below, which evidences the 5150 bat's actual weight of 18.6  
12 ounces.



26  
27       29.       This means that the 5150 bat is closer to a -8 drop than a -11 drop,  
28 which is significantly heavier.

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

3 31. Had Plaintiff known the truth about the weight of the 5150 bat, that it  
4 was not as represented, labeled and advertised by Rawlings, he would not have  
5 purchased the bat, or would have paid less for it.

6 Complaints On-Line About Rawlings Bats Being Heavier Than Advertised

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

- 11 • "True weight is far off from the truth!"

12 By Dinu Mathew on September 2, 2018 (Style Name: -11/16 oz)

13 "The bat is no where close to 16 oz it is more like 18.5 oz, and I took it off  
14 the wrap which means I am stuck with it"<sup>7</sup>

- 15 • "Weight 2 oz heavy then labeled"

16 By jarrettdrivera on May 5, 2018 (Style Name: -10/20 oz)

17 "All of the USA 5150 weigh more the the labeled so they are really a drop  
18 8"<sup>8</sup>

- 19 • "Bat weighs 3 ounces more than advertised."

20 By Amazon Customer on April 26, 2018 (Style Name: -11/17 oz)

21 "Ordered this bat for my six year old. Bat weighs 3 more ounces than  
22 advertised. He couldn't swing the bat."

- 23 • "WTF!!! Bat is overweight!!!!!!!!!"

---

24 <sup>7</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 <sup>8</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 By T Rob on March 27, 2018 (Style Name -10/18 oz)

2 “Well i order this bat 28 inches long and 18 oz, the bat came in 28 inches  
3 long and has on it 18 oz !!! I put the bat on the scale and it weighs 20.5  
4 oz!!! WTF !!!!”<sup>9</sup>

- 5 • “3 oz over stated weight”

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

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

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

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

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

19 33. Even on Rawlings’ own website, consumers have expressed concern  
20 that the Rawlings 2018 5150 bat feels heavier than it should. An anonymous  
21 consumer posted eight months ago, under the title, “Bat has good pop but feels a lot  
22 heavier,” as follows: “Bat is advertised at 16 oz not happy with the actual weight”.

23 \_\_\_\_\_  
24 <sup>9</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>10</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>11</sup> *Id.*  
28

1 The consumer included a picture of the bat on a scale showing that the bat weighed  
2 in at 18.47 ounces, “2.47 oz heavier”. The Rawlings consumer thus indicated, “No,  
3 I do not recommend this product.”<sup>12</sup>

4 34. Just like these other consumers who also appear to have weighed their  
5 Rawlings bats and learned that they are not the weight represented by Rawlings,  
6 Plaintiff’s 5150 bat also is not the weight represented, labeled and advertised by  
7 Rawlings.

### 8 **CLASS ALLEGATIONS**

9 35. Pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil  
10 Procedure, Plaintiff brings this action individually and on behalf of a class of  
11 consumers who purchased in the United States any model of Rawlings baseball bat  
12 during the applicable limitations period that was misrepresented or falsely labeled as  
13 being a different weight than it actually is (the “Class”).

14 36. Plaintiff also brings this action individually and on behalf of a subclass  
15 of consumers who purchased in California any model of Rawlings baseball bat  
16 during the applicable limitations period that was misrepresented or falsely labeled as  
17 being a different weight than it actually is (the “California Subclass”). The Class and  
18 Subclass are sometimes collectively referred to hereinafter as the “Class.”

19 37. Excluded from the Class are Defendant, its affiliates, predecessors,  
20 successors, officers, directors, agents, servants and employees and the immediate  
21 families of such persons.

### 22 **Numerosity**

23 38. The members of the Class are too numerous for joinder to be  
24 practicable. There are at least tens of thousands of purchasers of Rawlings bats in  
25 the United States and State of California. There are at least thousands of purchasers  
26 of the 5150 bats in the United States and State of California.

---

27 <sup>12</sup> <https://www.rawlings.com/product/US8511.html> (last visited October 18, 2018).

1 **Commonality**

2 39. There is a well-defined community of interest in the relevant questions  
3 of law and fact among members of the Class. Common questions of law and fact  
4 predominate over any questions affecting individual Class members, including, but  
5 not limited to:

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

22 **Typicality**

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

25 41. If members of the Class brought individual cases, they would require  
26 proof of the same material and substantive facts and would seek the same relief.

27 42. The claims of Plaintiff and the Class members share a common nucleus  
28

1 of operative facts and originate from the same conduct by Rawlings.

2 **Adequacy Of Representation**

3 43. Plaintiff will diligently represent the interests of the Class. The  
4 interests of Plaintiff are sufficiently aligned with the interests of the other Class  
5 members such that he will have no conflicts with the interests of the Class and will  
6 be an adequate representative.

7 44. Counsel for Plaintiff is experienced in consumer class action litigation  
8 and will prosecute the action with skill and diligence.

9 **Superiority**

10 45. The prosecution of separate actions by individual Class members would  
11 create a risk of inconsistent or varying adjudications which would establish  
12 incompatible standards of conduct for the parties opposing the Class. Such  
13 incompatible standards of conduct and varying adjudications on the same essential  
14 facts, proof and legal theories would also create and allow the existence of  
15 inconsistent and incompatible rights within the Class.

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

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

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

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

26 d. The proposed class action is manageable.

27 47. Defendant has acted and failed to act in a uniform manner on grounds  
28

1 generally applicable to Plaintiff and the other members of the Class in  
2 misrepresenting the weights of its baseball bats so that final declaratory and  
3 injunctive relief as requested herein are appropriate with respect to the Class as a  
4 whole.

5 48. Therefore, class treatment of Plaintiff's claims is appropriate and  
6 necessary.

7 **COUNT I**

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

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

10 49. Plaintiff repeats and realleges each and every allegation contained in  
11 paragraphs 1-48 above as if fully set forth herein.

12 50. Plaintiff Sotelo has standing to pursue this claim under California's  
13 Unfair Competition Law ("UCL") because he suffered an injury-in-fact and lost  
14 money as a result of Defendant's unfair practices. Specifically, had Plaintiff known  
15 the truth about the weight of the 5150 bat, that it was not as represented by  
16 Rawlings, he would not have purchased the bat, or would have paid less for it.

17 51. Rawlings' act of advertising and labeling its bats, including the 5150  
18 bat, as a materially different weight than what they actually are constitutes a course  
19 of unfair conduct within the meaning of Cal. Civ. Code § 17200, *et seq.*

20 52. The conduct of Defendant harms the interests of consumers and market  
21 competition. There is no valid justification for Defendant's conduct.

22 53. Defendant engaged in unlawful business acts and practices by violating  
23 the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* and § 17500,  
24 Cal. Bus. & Prof. Code, as alleged in Counts II and III hereinbelow.

25 54. Defendant engaged in fraudulent business acts or practices and  
26 deceptive, untrue or misleading advertising under § 17200 by knowingly  
27 misrepresenting the Rawlings bats as weighing a materially different amount than  
28

1 they actually weigh. Such practices are devoid of utility and outweighed by the  
2 gravity of harm to Sotelo and the California Subclass who lost money by paying for  
3 the Rawlings bats believing they were the represented weight when they in fact were  
4 not.

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

8 56. 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 57. Plaintiff Sotelo is also seeking injunctive relief on behalf of himself and  
16 the California Subclass. Sotelo wants his son to continue to play baseball and that  
17 would entail that Sotelo regularly visit stores or websites to buy bats. There is a  
18 threat of future harm because Sotelo would like to purchase the Rawlings bats in the  
19 future but is unable to rely on the accuracy of the labeling and advertising of the  
20 weights. He would like to purchase the Rawlings bats in the future assuming they  
21 were correctly labeled but without injunctive relief to ensure the accuracy of the  
22 labeling and advertising there is still a risk of future harm.

## 23 **COUNT II**

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

#### 25 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA SUBCLASS)**

26 58. Plaintiff repeats and realleges each and every allegation contained in  
27 paragraphs 1-48 above as if fully set forth herein.



1       59.       California Bus. and Prof. Code § 17500 prohibits untrue or misleading  
2 advertising.

3       60.       Plaintiff Sotelo has standing to pursue this claim under § 17500  
4 because he suffered an injury-in-fact and lost money as a result of Defendant's  
5 untrue and misleading practices. Specifically, had Plaintiff known the truth about  
6 the weight of the bat, that it was not as represented by Rawlings, he would not have  
7 purchased the bat, or would have paid less for it.

8       61.       Advertising and labeling the Rawlings bats as being of a certain weight  
9 when they are actually of a materially different weight constitutes a deceptive,  
10 untrue, and misleading advertising practice by Defendant under § 17500.

11       62.       Defendant engaged in fraudulent business practices by misrepresenting  
12 the weight of its bats which was known to it, or which by the exercise of reasonable  
13 care should be known to it. As the manufacturer and distributor of the bats at issue,  
14 Defendant was in control of the label placed on the bats and the quality control  
15 processes to ensure the weights were accurately labeled.

16       63.       Such practices are devoid of utility and outweighed by the gravity of  
17 harm to Sotelo and the California Subclass who lost money by paying for the  
18 Rawlings bats that were mislabeled as to their actual weight.

19       64.       Plaintiff and the California Subclass and members of the public were  
20 likely to be deceived by a false weight in purchasing the bat, inasmuch as the weight  
21 of the bat is a significant factor in such a purchase.

22       65.       Each of Defendant's practices of untrue or misleading advertising  
23 enumerated above was the direct and proximate cause of financial injury to Sotelo  
24 and the California Subclass. Defendant has unjustly benefitted as a result of its  
25 wrongful conduct. Sotelo and California Subclass members are accordingly entitled  
26 to have Defendant disgorge and restore to Sotelo and California Subclass members  
27 all monies wrongfully obtained by Defendant as a result of the conduct as alleged  
28

1 herein.

2 66. Plaintiff Sotelo is also seeking injunctive relief on behalf of himself and  
3 the California Subclass. Sotelo wants his son to continue to play baseball and that  
4 would entail that Sotelo regularly visit stores or websites to buy bats. There is a  
5 threat of future harm because Sotelo would like to purchase the Rawlings bats in the  
6 future but is unable to rely on the accuracy of the labeling and advertising of the  
7 weights. He would like to purchase the Rawlings bats in the future assuming they  
8 were correctly labeled but without injunctive relief to ensure the accuracy of the  
9 labeling and advertising there is still a risk of future harm.

### 10 **COUNT III**

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

#### 12 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA SUBCLASS)**

13 67. Plaintiff repeats and realleges each and every allegation contained in  
14 paragraphs 1-48 above as if fully set forth herein.

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

19 69. Plaintiff Sotelo and members of the California Subclass are  
20 “consumers” within the meaning of § 1761(d) of the California Civil Code, and they  
21 engaged in “transactions” within the meaning of §§ 1761(e) and 1770 of the  
22 California Civil Code, including the purchases of the Rawlings bats.

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

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

25 72. Defendant’s unfair and deceptive business practices were intended to  
26 and did result in the sale of the Rawlings bats.

27 73. Defendant violated the CLRA by engaging in the following unfair and  
28

1 deceptive practices:

- 2 a) representing that Rawlings bats have characteristics, uses, or benefits  
3 that they do not have, in violation of §1770(a)(5);
- 4 b) representing that Rawlings bats are of a particular standard, quality, or  
5 grade when they are not, in violation of § 1770(a)(7); and
- 6 c) advertising Rawlings bats with the intent not to sell them as advertised,  
7 in violation of § 1770(a)(9).

8 74. If Sotelo and the California Subclass members had known that the  
9 Rawlings bats were not of the weight they were represented to be, they would not  
10 have purchased them at all or would not have purchased them at the prices they did.

11 75. As a direct and proximate result of Defendant's conduct, Sotelo and the  
12 California Subclass suffered injury and damages in an amount to be determined at  
13 trial.

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

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

22 78. Sotelo seeks monetary relief under the CLRA.

23 79. Plaintiff Sotelo is also seeking injunctive relief on behalf of himself and  
24 the California Subclass. Sotelo wants his son to continue to play baseball and that  
25 would entail that Sotelo regularly visit stores or websites to buy bats. There is a  
26 threat of future harm because Sotelo would like to purchase the Rawlings bats in the  
27 future but is unable to rely on the accuracy of the labeling and advertising of the  
28

1 weights. He would like to purchase the Rawlings bats in the future assuming they  
2 were correctly labeled but without injunctive relief to ensure the accuracy of the  
3 labeling and advertising there is still a risk of future harm.

4 80. Sotelo therefore seeks injunctive and declaratory relief, damages,  
5 restitution, costs, attorneys' fees, and any other relief available under the CLRA.

6 81. Pursuant to section 1780(d) of the CLRA, attached hereto as Exhibit B  
7 is an affidavit showing that this action has been commenced in the proper forum.

8 **COUNT IV**

9 **BREACH OF EXPRESS WARRANTY**

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

12 82. Plaintiff repeats and realleges each and every allegation contained in  
13 paragraphs 1-48 above as if fully set forth herein.

14 83. Rawlings was at all relevant times a merchant and a seller.

15 84. The Rawlings bats are goods and Plaintiff and the Class and California  
16 Subclass members purchased the Rawlings bats in a consumer transaction.

17 85. Rawlings expressly warranted to all purchasers the weight of the bats  
18 directly on the bats. This was a representation by Rawlings that the bats would  
19 perform as per the stated weight and weight drop. Plaintiff and the other members  
20 of the Class and California Subclass, prior to making their purchases, relied on  
21 Rawlings' express warranty that its bats were of a certain weight and this formed a  
22 part of the basis of the bargain.

23 86. Because Rawlings stated the weight of the bat directly on the bat, it  
24 communicated directly to purchasers, including Plaintiff and the members of the  
25 Class and California Subclass, prior to their purchases, and therefore dealt directly  
26 with them and formed a direct relationship with them.

27 87. Rawlings breached its express warranty to Plaintiff and the other  
28

1 members of the Class and California Subclass because its bats are of a materially  
2 different weight than represented by Rawlings. As such, they do not perform as  
3 indicated such as they would if the weights were accurate.

4 88. Plaintiff's 5150 bat weighs approximately 18.6 ounces, materially  
5 more than the 16 ounces as represented by Rawlings directly on the bat.

6 89. On July 10, 2018, counsel for Plaintiff Sotelo sent Defendant a notice  
7 letter via certified mail, return receipt requested, advising Defendant that it had  
8 breached its warranty under California law and requested appropriate class wide  
9 relief.

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

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

15 **COUNT V**

16 **BREACH OF IMPLIED WARRANTY**

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

19 92. Plaintiff repeats and realleges each and every allegation contained in  
20 paragraphs 1-48 above as if fully set forth herein.

21 93. Rawlings was at all relevant times a merchant and a seller.

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

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

1        96.        Rawlings breached its implied warranties to Plaintiff and the Class  
2 and California Subclass because the Rawlings bats were not the weight stated on the  
3 bat and, as such, were not fit for their ordinary purpose, did not have adequate  
4 labeling, and did not conform to the promises or affirmations made on the label of  
5 the Rawlings bats. As alleged hereinabove, the weight stated on the bat is of  
6 material significance to purchasers of Rawlings bats and even a one-ounce  
7 difference is important to such purchasers.

8        97.        Defendant's implied warranties extend to Plaintiff and the Class and  
9 California Subclass because Defendant knew the purposes for which Plaintiff and  
10 the Class and California Subclass were purchasing the Rawlings bats and Defendant  
11 manufactured the Rawlings bats for those purposes. Defendant knew that Plaintiff  
12 and the Class and California Subclass were making such purchases based upon,  
13 among other things, the weight of the bat as stated directly on it.

14        98.        Plaintiff and the Class and California Subclass did not receive bats as  
15 Rawlings represented to them because the actual weights were not as stated on the  
16 bats. Plaintiff purchased a 5150 bat that was not as warranted because it weighs  
17 materially more than 16 ounces as stated on the bat.

18        99.        Thus, Defendant breached its implied warranties to Plaintiff and the  
19 Class and California Subclass. As a direct and proximate result of such breach of  
20 implied warranties by Defendant, Plaintiff Sotelo and the members of the Class and  
21 California Subclass suffered actual monetary damages in an amount to be  
22 determined at trial.



**COUNT VI**

**UNJUST ENRICHMENT**

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

100. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-48 above as if fully set forth herein.

101. Plaintiff and the Class and California Subclass members conferred a benefit on Defendant by purchasing Rawlings bats that were not the weight represented on the bat and advertised. Defendant is aware that customers purchase bats based at least in part on the weight that it represents the bat to be.

102. Defendant's retention of the monies paid for a bat that is not the weight it is represented and advertised to be by Defendant violates the principles of justice, equity and good conscience.

103. Plaintiff paid money, as set forth above, to purchase a 5150 bat that weighed 16 ounces when it in fact did not weigh 16 ounces but weighed approximately 18.6 ounces, which is materially more. Similarly, Class and California Subclass members paid money for bats that were not of the weight that Defendant represented on the bat that they are.

104. It would be inequitable and unjust for Defendant to retain the benefit of such monies obtained from Plaintiff and the Class and California Subclass because Defendant misrepresented the weight of the Rawlings bats.

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

**PRAYER FOR RELIEF**

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

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

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims so triable.

Dated: October 25, 2018

Respectfully submitted,

By: /s/ David R. Shoop

David R. Shoop (220576)

Thomas S. Alch (136860)

[david.shoop@shooplaw.com](mailto:david.shoop@shooplaw.com)

[thomas.alch@shooplaw.com](mailto:thomas.alch@shooplaw.com)

**SHOOP, A PROFESSIONAL CORPORATION**

350 S. Beverly Drive, Suite 330

Beverly Hills, CA 90212

Tel: (310) 277-1700

Fax: (310) 277-8500

1 Janine Pollack  
2 [pollackj@thesultzerlawgroup.com](mailto:pollackj@thesultzerlawgroup.com)  
3 Adam Gonnelli  
4 [gonnellia@thesultzerlawgroup.com](mailto:gonnellia@thesultzerlawgroup.com)  
5 **THE SULTZER LAW GROUP P.C.**  
6 351 West 54<sup>th</sup> Street, Suite 1C  
7 New York, New York 10019  
8 Tel.: (212) 969-7810  
9 Fax: (888) 749-7747

6 Lee S. Shalov  
7 [lshalov@mclaughlinstern.com](mailto:lshalov@mclaughlinstern.com)  
8 Jason S. Giaimo  
9 [jgiaimo@mclaughlinstern.com](mailto:jgiaimo@mclaughlinstern.com)  
10 **MCLAUGHLIN & STERN LLP**  
11 260 Madison Avenue  
12 New York, New York 10016  
13 Tel.: (212) 448-1100  
14 Fax: (212) 448-0066

11 C. Mario Jaramillo (195343)  
12 [cmj@access.law](mailto:cmj@access.law)  
13 **ACCESS LAWYERS GROUP**  
14 527 South Lake Avenue, Suite 200  
15 Pasadena, CA 91101  
16 Tel: (877) 360-3383  
17 Fax: (866) 686-5590

15 Counsel for Plaintiff and the Class  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

**McLAUGHLIN & STERN, LLP**  
FOUNDED 1898

LEE S. SHALOV  
Partner  
[lshalov@mclaughlinstern.com](mailto:lshalov@mclaughlinstern.com)  
(646) 278-4298

260 MADISON AVENUE  
NEW YORK, NEW YORK 10016  
(212) 448-1100  
FAX (212) 448-0066  
[www.mclaughlinstern.com](http://www.mclaughlinstern.com)

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:

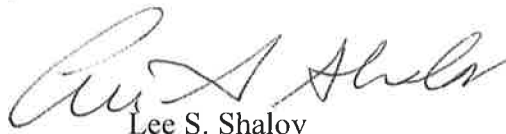
- Representing that [the] services have ... approval, characteristics, . . . uses [or] benefits which they do not have;
- Representing that [the] services ... are of a particular standard, quality or grade ... if they are of another; and
- Advertising services ... with intent not to sell them as advertised.

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



# EXHIBIT B

1 David R. Shoop (220576)  
David.shoop@shooplaw.com  
2 **SHOOP, A PROFESSIONAL LAW CORPORATION**  
350 S. Beverly Drive, Suite 330  
3 Beverly Hills, CA 90212  
Tel: (310) 277-1700  
4 Fax: (310) 277-8500

5  
Janine L. Pollack  
6 pollackj@thesultzerlawgroup.com  
Adam Gonnelli  
7 gonnellia@thesultzerlawgroup.com  
8 **THE SULTZER LAW GROUP P.C.**  
351 West 54<sup>th</sup> Street  
Suite 1C  
9 New York, NY 10019  
Tel: (212) 969-7811  
10 Fax: (888) 749-7747

11  
Lee S. Shalov  
12 lshalov@mclaughlinsterin.com  
Jason S. Giaimo  
13 jgiaimo@mclaughlinstein.com  
14 **MCLAUGHLIN & STERN LLP**  
260 Madison Avenue  
New York, NY 10016  
15 Tel: (212) 448-1100  
16 Fax: (212) 448-0066

Counsel for Plaintiff and the Class

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 RICHARD SOTELO, on behalf of )  
himself and all others similarly )  
21 situated, )

22 Plaintiff, )

23 v. )

24 RAWLINGS SPORTING GOODS )  
25 COMPANY, INC., )

26 Defendants. )

Case No.:

**AFFIDAVIT PURSUANT TO  
CALIFORNIA CIVIL CODE § 1780(d)**

1 I, RICHARD SOTELO, hereby declare that:

2 1. I am a plaintiff in the above-captioned action. I have personal  
3 knowledge of the facts set forth below, and if called as a witness I could and would  
4 testify competently thereto. I make this affidavit as required by California Civil  
5 Code § 1780(d).

6 2. My Complaint filed in this matter contains a cause of action for  
7 violations of the Consumers Legal Remedies Act against Rawlings Sporting Goods  
8 Company, Inc. ("Defendant), a corporation doing business nationwide, including  
9 California, with its headquarters located in Town and Country, Missouri.

10 3. The Complaint in this action is filed in a proper place for the trial of  
11 this action because I am domiciled in Los Angeles County, California and because  
12 Defendant is doing business in Los Angeles County.

13 4. The Complaint in this action is further filed in a proper place for the  
14 trial of this action because a substantial portion of the transactions that are the  
15 subject of the action occurred in Los Angeles County.

16 I declare under penalty of perjury under the laws of the United States of  
17 America that the foregoing is true and correct.

18 Executed by me in Canyon Country, California, on October 23 2018.

19

20

21

22

23

24

25

26

27

28



RICHARD SOTELO