

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROCA LABS, INC.,

Case No: 8:14-cv-2096-T-33EAJ

Plaintiff,

v.

CONSUMER OPINION CORP. and
OPINION CORP.,

Defendants.

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**DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR ENTRY OF A TEMPORARY INJUNCTION**

DEFENDANTS, OPINION CORP & CONSUMER OPINION CORP., hereby
oppose Plaintiff's Motion for Entry of a Temporary Injunction.¹

I. Introduction

Roca Labs ("Roca") is a company that *really* wants to avoid criticism. However, instead of doing so by delivering a quality product and quality service, it seeks to suppress all criticism through underhanded (if not illegal) means. No matter what kind of hyperbole or unsupported assertions the Plaintiff tries to throw into the docket, *that* is why we are before this Honorable Court, nothing more, nothing less.

¹ Plaintiff improperly conflates these two entities, but for the purposes of this opposition, the Defendants will forgive this, as it is largely irrelevant to the outcome of the motion. The Motion is doomed for far less technical reasons than claims against the wrong party.

Roca sells a diet product, as an alternative to gastric bypass surgery. Roca claims that its “components are Guar Gum, Konjac, Inulin, Beta Glucan, Xanthan Gum, Maltodextrin, Vitamins B-6, B-12, C,” and flavoring. ECF 2 at 51.² Roca claims “these fibers are activated by large amounts of water and occupy most of the stomach, leaving only 20% available for food intake.”³ In other words, Roca Labs’ product primarily consists of industrial-food thickening agents that expands and increases the viscosity of water. Declaration of Dr. Thomas Parisi, attached hereto as Exhibit 1 (hereinafter “Parisi Decl.”) ¶8. The theory is simple: If you fill your stomach with it, you don’t have room, or hopefully desire, to fill it with anything else.⁴ A layperson might readily presume that such a scheme would result in weight loss. However, this low-tech, low-research formula is of specious value to many people – as such an approach can lead to health problems and even weight *gain* in some users. Parisi Decl. ¶¶9-10.

Even legitimate, FDA-approved medicines, foods, and medical treatments, will have varying results and physical reactions. Part of how our body of knowledge grows, in the absence of FDA trials, is through consumers sharing their experiences. Parisi Decl. ¶¶15-17. This is almost imperative in the often shady underworld of “nutraceuticals,” which are neither FDA approved, nor seemingly regulated by anyone except their producers’ own ethics, such as they are.⁵ Therefore, consumers need feedback from prior users, so that they can at least have some

² In a promotional video, a spokes model vacantly reads from a teleprompter and misleadingly states that the ingredients are “approved by the World Health Organization,” as if that United Nations institute took some time off from fighting ebola in order to stamp its imprimatur on Roca’s concoction. <youtube.com/watch?v=0wNYozD1XEM> (last visited 15 Sept. 2014).

³ <youtube.com/watch?v=0wNYozD1XEM>

⁴ <youtube.com/watch?v=gJ9UeimqSqs&list=UUI7sVLkpP6ivf1P8BIyPW_g>

ability to predict side effects or efficacy issues. Parisi Decl. ¶18. Without this feedback, the public is put at risk. Parisi Decl. ¶19. But, Roca shows little concern for what happens to its users – if its product works for them, then Roca wants that information out there, but woe unto the user who gets sick or finds it ineffective. If they don’t keep their traps shut, Roca threatens to sue them. See Exhibit 2 (Example of Roca’s threats issued to dissatisfied customers); see also Exhibit 3, Declaration of Jennifer Schaive (“Schaive Decl.”) ¶11).⁶

The Defendants provide a consumer review site upon which users share their experiences with any number of consumer goods and services. See Exhibit 4 (declaration of Michael Podolsky (hereinafter Podolsky Decl.)). Roca Labs is only one of thousands of businesses reviewed on Defendants’ site. Podolsky Decl. ¶8. Some reviews are negative. Some are gushingly positive. The Defendants do not author any of the reviews, which are all provided by third parties. Podolsky Decl. ¶9. With respect to content, the Defendants are agnostic, hoping that the power of the marketplace of ideas will give consumers the ability to make an informed decision about whether they wish to put Roca Labs’ concoction into their bodies, and whether they trust their health to this “nutraceutical” manufacturer. Podolsky Decl. ¶10.

⁵ Roca Labs discloses a number of possible side effects, in a YouTube video starring “Dr. Ross Finesmith.” youtube.com/watch?v=sfZpZ-0zTus&list=UUI7sVLkpP6ivf1P8BIyPW_g youtube.com/watch?v=F7HQx2oZxY8&list=UUI7sVLkpP6ivf1P8BIyPW_g However, “Dr.” Finesmith does not appear to be a physician licensed in any state.

⁶ Some of these threats are signed by a “paralegal” who purports to “represent” Roca Labs. See Exhibit A to Schaive Decl. Among other concerns, this is the unauthorized practice of law. Activity that involves an important legal right of another is the practice of law. See *Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), vacated on other grounds, 373 U.S. 379 (1963); *Florida Bar v. Warren*, 655 So.2d 1131 (Fla. 1995) (corresponding with parties relative to a legal matter constitutes the practice of law).

A critical reader would likely presume that something is amiss upon reading the key clause in Roca Labs' purchase terms.⁷ ECF 2 at 46. "*In exchange for a significant discount... customers contractually agree that, regardless of their outcome, they will not speak, publish, print, blog or write negatively about ROCA or its products in any forum.*" ECF 2 at ¶ 24, ¶144. However, these same terms fail to disclose the amount of this "discount" or "subsidy." ECF 2 at 46; *see* Walsh Decl. ¶4. Roca then requires its customers to agree *inter alia* that they "*consent to and agree to entry of an injunction... in enforcement of your violation of this term and condition,*" and that the customer will then pay an elevated price for the product. ECF 2 at ¶ 130-131, 136. This is alongside the company's "no refunds" and "no returns" policies, and a waiver of any chargeback rights even if the product never arrives. ECF 2 at 48-49. *See* Exhibit 6 (declaration of Tameka Anderson, describing the inequity of Roca Labs' "no refunds" policy); *see also* Schaive Decl. ¶¶13-19. Roca Labs tries to scare its customers with clauses that provide it with a unilateral right to recoup not only an elevated price for the product, but "*any expenses we incur in resolving the issue*", and that if any of them make a negative comment, it will (apparently even if true) "*constitute defamation per se, entitling [Roca Labs] to injunctive relief and damages.*"⁸ ECF 2 at 53. The *coup de grace* is a section providing for a one-sided attorneys' fees provision, if a user dares to utter a negative word in public.

Your breach of the Agreement as it relates to your obligation to refrain from making, posting, or otherwise commenting negatively about the Formula, Website, or The Company, is deemed a material breach of the Agreement, and

⁷ That is, if they read them. They do not appear to be something the average consumer would read or could understand. *See* Exhibit 5, Declaration of Margaret Walsh ("Walsh Decl.") ¶4.

⁸ While Roca may claim that this provision amounts to a stipulation of irreparable harm justifying injunctive relief, the Court is not bound by such a purported stipulation between the parties. *Clark v. Merrill Lynch*, 1995 U.S. Dist. LEXIS 11541 (M.D. Fla. June 15, 1995).

you agree to pay all costs and attorney's fees related to The Company's subsequent efforts to enforce this term of the Agreement.⁹

ECF 2 at 58-59.

Does that sound like an upstanding company that stands behind its safe and reliable product? Or does that sound like a disreputable company, producing tubs of snake oil (or snake goop, as it were), and which knows that too much truth will hurt its fly-by-night bottom line? Roca Labs is desperately trying to force a cone of silence over each and every customer that discovers that Roca Labs' product is not only a specious remedy for their weight issues, but a potential cause of additional health problems.¹⁰ Plaintiff, desperate to sell as many of its tubs of goo to the public as it can before regulatory agencies come knocking does its best to bully its former customers into silence. Schaive Decl. ¶11; Exhibit A to Schaive Decl.

Roca Labs now seeks this Court's assistance to scrub consumer review sites of negative reviews, or seemingly any reviews at all, by filing this lawsuit. Roca wishes to deprive the public of these reviews, even if they might alert a consumer to a possible health crisis. In this spirit, Roca comes to this Court seeking a prior restraint, unethically trying to cast a sanctionable defamation claim as something else, in the hope that this Court will not notice.

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⁹ Presumably, Roca Labs' demand for attorneys' fees in the prayer for relief is based upon its position that the Agreement is enforceable against the Defendants, and thus Roca Labs believes that this clause binds the Defendants as well.

¹⁰ Noting that the Defendant is a New York company, it sounds to the Defendants like Roca is a company that wants to be called to task for violating New York law. This kind of agreement was held to be not only unenforceable, but subject to fines and injunctive relief prohibiting any further use of such language in New York. See *People v. Network Assocs.*, 758 N.Y.S.2d 466; 195 Misc. 2d 384 (N.Y. Sup. Ct. 2003).

II. Legal Analysis

A. Entry of a preliminary injunction is impermissible in this case

Temporary injunctive relief is not available to plaintiffs seeking to suppress allegedly defamatory speech. *Concerned Citizens for Judicial Fairness v. Yacucci*, 2014 Fla. App. LEXIS 13670 (Fla. 4th DCA Sept. 3, 2014); *Vrasic v. Leibel*, 106 So. 3d 485, 486 (Fla. 4th DCA 2013); *Chevaldina v. R.K./FL Mgmt., Inc.*, 133 So. 3d 1086, 1091 (Fla. 3d DCA 2014).¹¹ Presumably for that reason, Roca Labs has attempted to disguise this defamation claim as a Florida Deceptive and Unfair Trade Practices Act (FDUTPA) and tortious interference claim in order to try to side-step the clear case law that cuts against it in defamation actions. But, no matter many times you call a “dog” a “duck,” it will neither lay eggs nor quack.¹² Styling a baseless defamation claim as something else does not shield it from First Amendment scrutiny and render palatable the most odiferous and despised remedy known to our courts – the prior restraint. This exceptional relief is impermissible under Florida law and the First Amendment.

A prior restraint is an advance limitation on First Amendment activity. *Fantasy Book Shop, Inc. v. City of Boston*, 652 F.2d 1115, 1120 (1st Cir. 1981). This includes an injunction that prohibits speech prior to a determination that the speech is unprotected. See *Near v. Minnesota*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625 (1931). There is a “heavy presumption” against their validity. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558, 43 L. Ed. 2d 448, 95 S. Ct. 1239 (1975); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 9 L. Ed. 2d 584, 83 S. Ct. 631 (1963); *New*

¹¹ This is even the case when the speech is *false*. *Town of Lantana v. Pelczynski*, 290 So. 2d 566, 569 (Fla. 4th DCA 1974) (“Freedom from prior restraint upon speech and press extends to false, as well as true statements.”)

¹² See *Fla. Bar v. Neiman*, 816 So. 2d 587, 599 (Fla. 2002) (Describing the “duck test”). This case involves the “inverse duck test.”

York Times Co. v. United States, 403 U.S. 713, 714, 29 L. Ed. 2d 822, 91 S. Ct. 2140 (1971); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419, 29 L. Ed. 2d 1, 91 S. Ct. 1575 (1971).

Nevertheless, the Plaintiff comes to this Court, with clearly inapplicable claims, attempting to engage in misdirection – by asking the court to avert its gaze from the fact that what the Plaintiff truly wants is a prior restraint removing consumer reviews from publication before a trial. That is a textbook example of a prior restraint, and as explained above, the Supreme Court has *roundly rejected* prior restraints. See *Kinney v. Barnes*, 57 Tex. Sup. J. 1428 at n.7, 2014 Tex. LEXIS 764 (Tex. 2014) (citing SOBCHAK, W., *THE BIG LEBOWSKI*, 1998).

Perhaps after a trial, if the proper defendants (the authors of the comments) appeared in the case, *and* their speech was found to be unlawful, a narrow injunction *might* issue, but even *that* would be a challenging exercise, for even injunctions against speech that come *after* a trial are usually impermissible prior restraints. See Erwin Chemerinsky, *Injunctions in Defamation Cases*, 57 SYRACUSE L. REV. 157, 165 (2007); see also *Oakley, Inc. v. McWilliams*, 879 F. Supp. 2d 1087, 1089 (C.D. Cal. 2012) (“Injunctions against any speech, even libel, constitute prior restraints: they prevent[] speech before it occurs, by requiring court permission before that speech can be repeated.” (citation and internal quotation marks omitted)).

Nevertheless, Roca Labs asks this Court to invite a prime specimen of the precise genus and species of the most despised of all constitutional vermin. *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976) (holding that prior restraints are “the most serious and least tolerable infringement on First Amendment rights”). This particular prior restraint would, quite likely, be the most offensive one that we could consider – as it seeks to suppress warnings about products

that have *actually made people ill*. Walsh Decl. ¶¶6-8.¹³ Roca Labs wants this Court to help it hide the truth -- that its products make some people sick. Parisi Decl. ¶¶11-13; Walsh Decl. ¶¶6-8. This is information that needs to be disseminated to allow consumers to make an informed decision about Roca's product -- not censored.

Defamation plaintiffs seeking prior restraints are hardly rare. After all, if a company can enlist the power of the courts to stop criticism of its business practices, it scores a coup. But, as the Supreme Court said in *Organization for a Better Austin v. Keefe*, in overturning one, “[n]o prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices . . . warrants use of the injunctive power of a court.” 402 U.S. 415, 419-20 (1971). There are no modern cases in which a court has granted a preliminary injunction in a defamation claim that withstood appellate scrutiny. Armed with this knowledge, the Plaintiff attempted to dress up its defamation claim as a one of tortious interference and FDUTPA. This clumsy and unsuccessful sleight of hand¹⁴ was an attempt to try to side-step the clear case law that cuts against prior restraints in defamation actions, and it is not a new page in the would-be censor's playbook. In *Chevaldina v. R.K./FL Mgmt.*, 133 So. 3d 1086 (Fla. 3d DCA 2013), the

¹³ The complained-of statements are about evenly split between warnings about Roca Labs' product causing health problems, it simply not working, and complaints about Roca Labs' business practices, including the very “gag clause” that they seek to invoke in this case. Even in the absence of the Constitutional presumption against such an injunction, the negative policy implications of such an injunction are staggering.

¹⁴ Despite claiming a right to injunctive relief under specious tortious interference and FDUTPA claims in the Motion ECF 5, the Plaintiff simply uses such claims as point headings, while still speaking in defamation terms. For example, in arguing that there is irreparable injury, the Plaintiff does not claim that existing contracts will be tortiously interfered with, nor that it will be deceived by an unfair business practice. Instead, the alleged harm is reputational. “Roca has already suffered harm to its reputation . . . Each week approximately one thousand people see the false and malicious negative reviews. . . . Once a posting is made. . . damage to Roca's reputation is done. . . .” ECF 5 at 15. Despite sprinkling the words FDUTPA and “tortious interference” in where we have placed ellipses, the Plaintiffs fail to turn this into anything but a garden variety defamation claim, where the Plaintiff should join countless others who have failed to convince a court to grant a prior restraint.

plaintiff tried to dress up its defamation claims as tortious interference claims for the purposes of seeking a preliminary injunction. The trial court erroneously granted the motion, but the 3d DCA did not let it stand. *Id.*¹⁵

Even if we were to suspend the First Amendment for the purposes of this case, the motion would still fail. Roca cannot possibly prevail on the claims raised in the motion, and thus, cannot show a *possibility*, much less a *likelihood* of success on the merits. The Defendants are immune under 47 U.S.C. § 230, and therefore, is not liable for the content of any statements made by third parties, and thus none of the claims should survive even cursory review. Further, the public interest would be grossly disserved by the requested censorship. To boot, there is no urgency supporting a finding of irreparable harm.¹⁶ Roca Labs failed to offer any evidence or a suggested security amount, violating Fed. R. Civ. P. 65 / Fla. R. Civ. P. 1.610.

B. Plaintiff has no likelihood of success on the merits

1. Tortious Interference

To prevail in a tortious interference claim, a plaintiff must show “(1) the existence of a business relationship under which the plaintiff has legal rights; (2) knowledge of the relationship on the part of the defendant; (3) an **intentional and unjustified interference** with that relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the

¹⁵ Florida *state* court judges seem less careful when it comes to prior restraints, despite the fact that **every** time they do, they get slapped down by their appellate courts. See, e.g., *Concerned Citizens for Judicial Fairness v. Yacucci*, 2014 Fla. App. LEXIS 13670 (Fla. 4th DCA Sept. 3, 2014) (overturning unconstitutional prior restraint by Judge Shahood); *Chevaldina v. R.K./FL Mgmt.*, 133 So. 3d 1086 (Fla. 3d DCA 2013) (Reversing Judge Leesfield’s entry of an unconstitutional prior restraint when plaintiff claimed that the defamatory statements were made in furtherance of tortious interference); *Vrasic v. Leibel*, 106 So. 3d 485 (Fla. 4th DCA 2013) (overturning Judge Ross).

¹⁶ Plaintiff has waited well in excess of two years to seek injunctive relief. The Tweets Plaintiff complains of date back to at least June 2012. ECF 2, Exhibit E. The first comment on <pissedconsumer.com> was posted March 9, 2012. ECF 2, Exhibit F. This negates any claim of urgency warranting preliminary relief.

business relationship.” *Bortell v. White Mountains Ins. Group, Ltd.*, 2 So. 3d 1041, 1048 (Fla. 4th DCA 2009) (emphasis added), see also *Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126, 1127 (Fla. 1985). Even if Defendants had knowledge of Roca Labs’ customers beforehand, they would have been entirely justified warn them about the questionable product and unethical business practices, (as evidenced by the gag clause of the terms and conditions). “This cause of action requires a business relationship evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered.” *Ethan Allen Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 815 (Fla. 1994).

Plaintiff’s tortious interference claim swings on the notion that the Defendants “tortiously interfere[d] with Roca Lab’s customers by encouraging them to breach their customer agreement with Roca” by posting reviews on the Defendants’ website. ECF 5 at 2. While Defendants assert, *infra*, that this does not constitute tortious interference, neither Defendant denies that the Pissed Consumer website wishes for consumers to review products or services they have tried. But, this does not support liability, as there is no tort in allowing consumers to review products.

“[A]n action for tortious interference with a business relationship requires a business relationship evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered.” *Ethan Allen*, 647 So. 2d at 815. Roca Labs provides no evidence of an agreement which *would have been completed*. It simply speculates that everyone who reads the reviews is someone who was about to purchase Roca’s questionable product, but after the would-be-buyer saw a warning that it might make them ill (or that the company requires purchasers to enter into an unconscionable contract) they

thought better of it. That is not called “tortious interference,” that is called “an informed consumer making an intelligent choice.”

Further, the basis for Roca’s claims is that anyone who purchased the product *must* have agreed to the “gag clause” limiting the customer’s right to speak negatively (even truthfully so) about the product or the company. ECF 5 at 2. Anyone who did *not* buy the product would have no basis to agree to the gag-provision, and it would be inapplicable. But, the “Agreement” that these would-be buyers would have entered into is itself unlawful, as discussed *infra*.

Even if these facts could support a tortious interference claim, a relationship with a *past customer* does not provide a basis for the claim. *Ethan Allen*, 647 So. 2d at 815. While Roca Labs has burdensome terms and conditions, we can find nowhere among those burdens any obligation to be a repeat customer.¹⁷ “The mere hope that some of its past customers may choose to buy again cannot be the basis for a tortious interference claim.” *Id.* Therefore, Roca has no substantial likelihood of prevailing on the merits of its tortious interference claim, because the claim fails as a matter of law.

Finally, the tortious interference claim is barred as duplicative. In cases addressing this scenario – a plaintiff claiming defamation and basing a claim of tortious interference with business relations upon that supposed defamation – the tortious interference claim is precluded. *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607, 609 (Fla. 4th DCA 1975); *see Easton v. Weir*, 167 So.2d 245 (Fla. 2d DCA 1964) (holding that a single wrongful act gives rise to only a single cause of action). The single action rule applies to tortious interference claims like the one

¹⁷ In fact, repeat business does not seem to be Roca’s business plan, and discovery will likely show very few repeat customers.

in this case. “In Florida, a single publication gives rise to a single cause of action.” *Callaway Land & Cattle Co. v. Banyon Lakes C. Corp.*, 831 So. 2d 204, 208 (Fla. 4th DCA 2002).

In *Orlando Sports Stadium*, the plaintiff filed suit against a newspaper for defamation and tortious interference, alleging that the articles concerning the plaintiff were defamatory. 316 So. 2d at 608. The appellate court found that the defamation and tortious interference claims overlapped because they were based on the same articles and because the “thrust” of the complaint was that these articles were injurious to the plaintiff. *Id.* at 609. The extraneous tortious interference claim was “nothing more than elements of damage flowing from the alleged wrongful publications.” *Id.* Roca Labs must establish an additional, distinct action that is not embodied within the defamation causes of action to bring a tortious interference claim. Therefore, without an independent basis, this claim itself cannot be sustained, much less serve as the basis for injunctive relief.

a. Roca Labs’ Agreement is Unenforceable

Roca Labs uses the “Agreement” with their customers as the basis for much of its complaint. “*In exchange for a significant discount... customers contractually agree that, regardless of their outcome, they will not speak, publish, print, blog or write negatively about Roca or its products in any forum.*” ECF 6 at 5 (emphasis added). Preliminarily, no Defendant is a party to, or bound by, this contract, and neither has an obligation to respect it. “[A] contract does not bind one who is not a party to the contract, or who has not agreed to accept its terms.” *Marlite, Inc. v. Eckenrod*, 2012 U.S. Dist. LEXIS 118140, 2012 WL 3620024 (S.D. Fla. July 13, 2012), *citing Whetstone Candy Co. v. Kraft Foods, Inc.*, 351 F.3d 1067, 1074-75 (11th Cir. 2003).

Even if the Defendants were so bound, the “gag clauses” in the Agreement are unconscionable and unenforceable, as to *anyone*. An unconscionable contract is one “such as no

man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.” *Hume v. United States*, 132 U.S. 406, 411 (1889) (quoting *Earl of Chesterfield v. Janssen*, 28 Eng. Rep. 82, 100 (Ch. 1750)).¹⁸ “In general, an unconscionable contract has been defined as one which is so grossly unreasonable as to be unenforceable because of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.” *King v Fox*, 7 NY 3d 181, 191 (2006); *see also McCollum v. Xcare.net, Inc.*, 212 F. Supp. 2d 1142, 1148 (N.D. Cal. 2002) (noting that “the California Supreme Court defined an unconscionable contract as one that considered in its context, is unduly oppressive”). Roca Labs complains that it put the Defendants on notice of the unconscionable contract, and on that basis claims that it compelled them to respect its outrageous (and unlawful) terms.

The standard for injunctive relief with respect to restrictive covenants requires plaintiff to plead and prove: (1) the existence of an enforceable contract, including a statutorily-defined legitimate business reason supporting each restrictive covenant; (2) defendants’ intentional breach of the restrictive covenants; and (3) that plaintiff has no adequate remedy other than injunctive relief.

Milner Voice & Data, Inc. v. Tassy, 377 F. Supp. 2d 1209, 1214 (S.D. Fla. 2005). Roca Labs cannot use the gag clauses as the basis for seeking injunctive relief, even as it applies to its customers who wrote the reviews on the Defendants’ website, because Roca Labs has presented no legitimate business reason to support the gag clause.

Legitimate business interest may include trade secrets; valuable confidential business or professional information that otherwise does not qualify as trade secrets; substantial relationships with specific prospective or existing customers; or customer goodwill

¹⁸ Roca’s contract is procedurally unenforceable as well as substantively so. Nowhere in their “Agreement” do they so much as discuss how much the “discounted” price is. This two-tiered pricing is an illusion. *See In re Zappos, Inc.*, 893 F. Supp. 2d 1058, 1064 (D. Nev. 2012).

associated with: an ongoing business by way of trade name, trademark, service mark, or ‘trade dress,’ or a specific geographic location, or a specific marketing or trade area.

United Subcontractors, Inc. v. Godwin, 2012 U.S. Dist. LEXIS 67061, 18, 2012 WL 1593173 (S.D. Fla. Feb. 3, 2012). Preventing customers from providing their opinion of Roca Labs’ product is not a legitimate business interest, but instead is itself a deceptive trade practice. Any act “which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a consumer; or results in a gross disparity between the value received by a consumer and the price paid, to the consumer’s detriment” constitutes an unconscionable trade practice. See *People v. Network Assocs.*, 758 N.Y.S.2d 466; 195 Misc. 2d 384 (N.Y. Sup. Ct. 2003). Deceiving customers about their ability to post factual reviews about the product online is itself unlawful in the Defendants’ home district. *Id.* Of course, the end result of this unconscionable agreement is that the only information about this product that can be readily obtained is the fluff disseminated by the Plaintiff. Therefore, consumers buying this product are deprived of the ability to make an informed decision about something that could negatively affect their physical well-being. Parisi Decl. ¶15-19; Schaive Decl. ¶8, 18 And then, once they purchase it, based on information skewed by Roca’s bullying of anyone who might share inconvenient truths, Roca refuses to give the consumers refunds if they are dissatisfied or even if they get ill from it. Schaive Decl. ¶¶6-7, 13, 16; Walsh Decl. ¶¶9, 14.

Suppressing consumer reviews is unconscionable and unenforceable – no matter what the product. New York law (the law that governs the Defendants’ conduct) prohibits user agreements that restrict a customer’s right to discuss the services. See *People v. Network Assocs.*, 758 N.Y.S.2d at 469. This is even more so when we consider the context. While Plaintiff calls its product a “food additive” (presumably to avoid FDA regulation), is the concoction a drug, a

food, or something else? Whatever it is, this is a product that has made some consumers sick. Walsh Decl. ¶¶6-8. Forcing them to remain silent, thus depriving other victims of the ability to make an informed decision, is unconscionable.

2. FDUTPA

It is most ironic that Roca Labs seeks to invoke FDUTPA in this case, given its own practices. The purpose of FDUTPA is to “protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2); see also *Natural Answers, Inc. v. SmithKline Beecham Corp.*, 529 F.3d 1325 (11th Cir. 2008). A proper analogy here might involve a pot and a kettle.

FDUTPA has three elements: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. *City First Mortg. Corp. v. Barton*, 988 So.2d 82, 86 (Fla. 4th DCA 2008) (quoting *Rollins*, 951 So.2d at 869, *rev. den.*, 962 So.2d 335 (Fla. 2007)). But, the *sine qua non* of a FDUTPA claim is that the plaintiff must be a consumer or a competitor wronged by the defendant’s conduct. See *Kertesz v. Net Transactions, Ltd.*, 635 F. Supp. 2d 1339, 1349 (S.D. Fla. 2009) (holding that the original version of FDUTPA applied only to “consumers.” Legislative change of this term to “person” encompassed businesses, but did not broaden the degree of factual standing to bring a FDUTPA claim); *Dobbins v. Scriptfleet, Inc.*, 2012 U.S. Dist. LEXIS 23131, 2012 WL 601145 (M.D. Fla. Feb. 23, 2012) (same). FDUTPA requires a consumer transaction. *Monsanto Co. v. Campuzano*, 206 F. Supp. 2d 1239, 1251 (S.D. Fla. 2002).

Florida courts clarified that while the language of the FDUTPA was amended with the 2001 revision, and substituted the word “person” for “consumer,” there still must be a consumer relationship between the parties, to provide for FDUTPA standing.

[T]he legislative intent of the 2001 amendment was to clarify that ‘remedies available to individuals are also available to businesses,’ as opposed to creating a cause of action for non-consumers. Accordingly, the Court is not convinced that the 2001 amendment to FDUTPA creates a cause of action for [two parties], when there is no consumer relationship between them.

Dobbins v. Scriptfleet, Inc., citing *Kertes꜑ v. Net Transactions, Ltd.*, 635 F. Supp. 2d 1339, 1349 (S.D. Fla. 2009) (quoting Senate Staff Analysis and Economic Impact Statement, Florida Staff Analysis, SB 208, March 22, 2001, at p. 7). Roca is not a consumer of Defendants’ services, and has not provided any evidence to suggest that it is. Roca Labs lacks FDUTPA standing.

Even if Roca had standing, it could not sustain a FDUTPA claim. Under the Act, an “unfair practice” is “one that ‘offends established public policy’ and one that is ‘immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.’” *PNR, Inc. v. Beacon Prop. Mgmt.*, 842 So. 2d 773, 777 (Fla. 2003) (quoting *Samuels v. King Motor Co.*, 782 So.2d 489, 499 (Fla. 4th DCA 2001)). A “deceptive act” occurs when there is a “representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.” *PNR, Inc.*, 842 So.2d at 777 (quoting *Millennium Communs. & Fulfillment, Inc. v. Office of the AG, Dep’t of Legal Affairs*, 761 So.2d 1256, 1263 (Fla. 3d DCA 2000)).

In this case, any affected consumer would be one who received an honest review from the Pissed Consumer website, and thus made an informed decision to purchase or not purchase the product. This is precisely the opposite of a FDUTPA claim.

Plaintiff says that a “practice is unfair when it offends established public policy and when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious.” ECF 5 at 12. Defendants agree. The suppression of consumer reviews, some of which warn consumers of negative health consequences, fits that description. Meanwhile, no reasonable person could

contort that definition into “allowing consumers to share their experiences to the benefit of other consumers.”

Let us presume, *arguendo*, that Defendants are the evil conspiracy that Roca paints them to be; even reprehensible conduct is not actionable under FDUTPA absent loss or damage to a consumer. *Hetrick v. Ideal Image Dev. Corp.*, 758 F. Supp. 2d 1220, 1229-30 (M.D. Fla. 2010), citing *General Motors Acceptance Corp. v. Laesser*, 718 So. 2d 276, 277 (Fla. 4th DCA 1998). There is no identifiable loss or damage to a consumer here, and unless Roca is a consumer of the Defendants’ services or products, it lacks standing to bring such a claim on behalf of other consumers who have no quarrel with the Defendants. Roca Labs calling this business “immoral,” is not enough to give it standing under FDUTPA¹⁹ (although it is ironic).

Furthermore, FDUTPA has no extraterritorial effect over these New York defendants. See *Carnival Corp. v. Rolls-Royce PLC*, 2009 U.S. Dist. LEXIS 107261 (S.D. Fla. Nov. 17, 2009) (holding “Plaintiffs’ claim that Defendants violated FDUTPA must be based entirely on actions that occurred within Florida”); *Millennium Communications & Fulfillment, Inc. v. Office of Attorney General*, 761 So.2d 1256, 1262 (Fla. 3d DCA 2000) (affirming that the purpose of FDUTPA is to prohibit unfair and deceptive practices which transpire within Florida). Defendants are New York corporations, and consumers that post reviews on the Pissed Consumer website hail from

¹⁹ Even if its practices are “unethical,” which they are not, as a § 230 protected business, it still has immunity: Claims against another, far more maligned, consumer review business famously failed in Florida. “The business practices of Xcentric, as presented by the evidence before this Court, are appalling. Xcentric appears to pride itself on having created a forum for defamation. No checks are in place to ensure that only reliable information is publicized... However much as this Court may disapprove of business practices like those embraced by Xcentric, the law on this issue is clear. Xcentric enjoys complete immunity from any action brought against it as a result of the postings of third party users of its website.” *Giordano v. Romeo*, 76 So. 3d 1100, 1102 (Fla. 3d DCA 2011).

all over the world. The only thing that seems to have occurred in Florida is that Roca Labs itself engaged in questionable business practices here.

As if we need more, Plaintiff has no evidence of damages. “Proof of actual damages is necessary to sustain a FDUTPA claim.” *Dorestin v. Hollywood Imps., Inc.*, 45 So. 3d 819, 824 (Fla. 4th DCA 2010); *see Rollins, Inc. v. Heller*, 454 So. 2d 580, 585 (Fla. 3d DCA 1984). Instead, Plaintiff makes generic, broad sweeping statements that it suffered damage. ECF 6 at 14. This is insufficient. Further, it is not “damages” if a potential customer thinks better of the transaction after receiving truthful information about a product or a company’s questionable business practices. That is the marketplace of ideas at work.

Despite Roca’s claims of Defendants’ morality lapses, the only thing that is unethical in this case is that Roca Labs wishes to keep negative data out of the public eye – presumably so that any health problems it causes will never be reported in the light of day. Parisi Decl. ¶¶20-22. The only thing that Roca Labs bases its claims of “immorality” upon is the fact that it does not want the truth out there – that its product does not work for everyone, and it makes some people sick. Parisi Decl. ¶¶12-13, 24; Walsh Decl. ¶¶6-8. Roca now wants this Honorable Court to be its censor, ordering these shared experiences wiped from publication, before a trial on the merits. If this Court does so, then the next victim is on this Court’s conscience.

3. Defamation

Plaintiff only cites to tortious interference and FDUTPA as the basis for its request for a prior restraint, presumably because a preliminary injunction is not available in defamation cases. Nevertheless, they base the request on the foundation that the contents of the third party posts published on <pissedconsumer.com> are false and defamatory. ECF 2 at 33. Even if they are, the Pissed Consumer website is subject to immunity under 47 U.S.C. § 230, and cannot be held

liable for the content of statements made by third parties, not even for equitable remedies. See *Giordano v. Romeo*, 76 So. 3d 1100 (Fla. 3d DCA 2011).

a. Section 230

The Pissed Consumer website only hosts third-party produced content appearing on <pissedconsumer.com> and is neither the author nor the editor of the reviews. Podolsky Decl.

¶9. Because it is a service provider, and not a publisher, Defendants are immune from liability under 47 U.S.C. § 230 (the “Communications Decency Act” or “CDA”). “The purpose of the CDA is to establish ‘federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.’” *Alvi Armani Med., Inc. v. Hennessy*, 629 F. Supp. 2d 1302, 1306 (S.D. Fla. 2008), quoting *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321-1322 (11th Cir. 2006). In order to qualify as a service provider under Section 230, (1) the defendant must be a provider or user of an interactive computer service; (2) the cause of action must treat the defendant as a publisher or speaker of information; and (3) the subject information must be provided by another information content provider. *Whitney Info. Network, Inc. v. Xcentric Ventures, LLC*, 2008 U.S. Dist. LEXIS 11632, 26, 2008 WL 450095 (M.D. Fla. Feb. 15, 2008). While Plaintiff wants to hold Defendants liable as the “publisher” of the Tweets that are generated from reviews posted on <pissedconsumer.com>, the Tweets are automatically broadcast third party statements, and are not written by the Defense. Podolsky Decl. ¶11. Accordingly, even this creative argument fails as a matter of law.

“[L]awsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred by the CDA.” *Hopkins v. Doe*, 2011 U.S. Dist. LEXIS 136038, 4, 2011 WL 5921446 (N.D. Ga. Nov. 28, 2011), citing *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir.

1997). Reviews posted on Pissed Consumer are automatically disseminated on Twitter, but that does not make Defendants “publishers” under the CDA, but instead falls within the purview of immunity. Defendants’ users authored the statements. Dissemination of them does not trigger a § 230 exception. Disseminating the content to the public is not enough. “A ‘provider’ of an interactive computer service includes websites that host third-party generated content.” *Regions Bank v. Kaplan*, 2013 U.S. Dist. LEXIS 40805, 47, 2013 WL 1193831 (M.D. Fla. Mar. 22, 2013); citing *Doe v. Friendfinder Network, Inc.*, 540 F. Supp. 2d 288, 293 (D.N.H. 2008).

Furthermore, Plaintiff is attempting to confer liability on Defendants as “co-authoring” the posts on the website because there is a set form that third-party users must use to submit reviews. However, providing a form for third parties to submit information to the website is also not sufficient to give rise to liability.

The website’s content submission form simply instructs users to ‘[t]ell us what’s happening. Remember to tell us who, what, when, where, why.’ The form additionally provides labels by which to categorize the submission. These tools, neutral (both in orientation and design) as to what third parties submit, do not constitute a material contribution to any defamatory speech that is uploaded.²⁰

The submission form in this case is also neutral, and does not amount to “material contribution” such that could give rise to liability as the publisher of the third-party statements.²¹

Since Section 230 bars its claims against the Defendants, Plaintiff cannot show by clear and convincing evidence that it has a strong likelihood of success on the merits to warrant granting an injunction on any claims in this case at all.

²⁰ *Jones v. Dirty World Entm’t Recordings, et al.*, 755 F.3d 398, 416 (6th Cir. 2014).

²¹ The Plaintiff tries to rely upon the Ninth Circuit’s decision in *Fair Hous. Council v. Roommates.com, LLC* for this argument, but in *Roommates*, the users had no choice but to render unlawful statements by using a drop down menu. 521 F.3d 1157, 1166 (9th Cir. 2008). This is why *Roommates.com* was held liable, and this is a most narrow ruling that does not constitute the wide gap in section 230 claimed by the Plaintiff. *Id.*

C. The Harm of an Injunction Outweighs its Benefit

The Plaintiff must prove that the alleged threatened injury to it would not disserve the public interest. Silencing consumers, who share presumptively First Amendment protected opinions, because Roca Labs wants to sell more unverified product to make more people sick, harms the public interest because of the censorship inherent in the relief. Furthermore, there are likely hundreds of other individuals who may be bilked just as prior customers were, by a product that not only does not guarantee weight loss, but may actually cause substantial medical harm. Parisi Decl. ¶¶11-13. The public has a right to know about side effects and health hazards, and the Pissed Consumer website, provides a service that allows individuals to provide their experiences and opinions, both positive and negative, in order to create a better-informed public. “Consumer reporting plays a vital role in ensuring that a company’s desire to maximize profit, if abused, will not go unnoticed; and online fora for the exchange of those ideas play an increasingly large role in informing consumers about the choices that make sense for them.” *Neumont Univ., LLC v. Little Bizzy, LLC*, 2014 U.S. Dist. LEXIS 69168 (D. Nev. May 20, 2014).

If the Court issues a prior restraint in this case, it will silence consumer warnings about a dangerous product. Further, it would violate core First Amendment principles, and impinge on the public right to receive this information. Plaintiff does not attempt to balance the equities to determine the relative harms. Instead, Plaintiff simply states “Defendants will suffer little or no harm by ceasing to interfere with our contractual relationships and removing the interfering postings about Roca.” ECF 5 at 16. Meanwhile, Plaintiff says nothing of the damage to free expression, nor of the damage to the public’s right to know.

The standard is not whether suppressing free speech rights of Defendant would harm the Defendant (which it would), but instead, it is a balancing test of whether the harm to the

defendant and the public interest, if the injunction were granted, would outweigh the harm to the plaintiff if the injunction were not granted. Consumer protection and review sites are of the utmost constitutional importance. See, e.g., *Neumont Univ., LLC v. Little Bizzy, LLC*, 2014 U.S. Dist. LEXIS 69168; *Carver v. Bonds*, 135 Cal. App. 4th 328, 343 (2005). Postings intended to aid consumers in choosing among service providers, are “directly connected to an issue of public concern.” See *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 897 (2004). Plaintiff cannot articulate any compelling interest sufficient to outweigh the harm to Defendant’s rights of free speech, nor the public’s right to know.

D. Plaintiff Shows No Irreparable Harm

Plaintiff simply, and generically states that “[i]f the injunction is not granted, Roca will face a substantial threat of irreparable injury.” ECF 5 at 15. However, it offers up no evidence in support of this request for highly extraordinary relief.²²

1. Delay is fatal to Plaintiff’s claim of irreparable harm

Plaintiff claims irreparable harm, yet waited more than two years to bring a claim. “Delay, or too much of it, indicates that a suit or request for injunctive relief is more about gaining an advantage (either a commercial or litigation advantage) than protecting a party from irreparable harm.” *Pippin v. Playboy Entm’t Group, Inc.*, 2003 U.S. Dist. LEXIS 25415, 5-6, 16 Fla. L. Weekly Fed. D 506 (M.D. Fla. July 1, 2003) (internal citations omitted). See *Love v. Blue Cross & Blue Shield of Ariz., Inc.*, 2010 U.S. Dist. LEXIS 39988, 38-39, 2010 WL 1249120 (S.D. Fla. Mar. 25, 2010) (delay is sufficient to deny a request for preliminary injunction), *Citibank, N.A. v.*

²² Defendants agree that the more dissemination of the truth, the less Roca will likely sell. But, this is not a legal harm. It is as if a mugger were to sue for an injunction preventing someone from warning passer-by that the criminal is waiting in a dark alley, and that they should take an alternate route.

Citytrust, 756 F.2d 273, 276 (2d Cir. 1985) (finding that a ten week delay was sufficient to negate a plaintiff's claim of irreparable harm); *Badillo v. Playboy Entm't Group, Inc.*, 2004 U.S. Dist. LEXIS 8236, 8, 17 Fla. L. Weekly Fed. D 529 (M.D. Fla. Apr. 16, 2004) (finding that "a nine month delay is fatal in this case to Plaintiffs claims of irreparable harm").

2. Plaintiff Has An Adequate Remedy at Law

The second requirement of demonstrating irreparable harm is that there must exist no adequate remedy at law. The burden of irreparable injury cannot be met by mere economic injury. "An injury is irreparable only if it cannot be undone through monetary remedies." *Taylor v. Florida State Fair Auth.*, 1995 U.S. Dist. LEXIS 17786, 17-18 (M.D. Fla. Aug. 15, 1995) *citing* *Sampson v. Murray*, 415 U.S. 61, 90, 94 S. Ct. 937, 953 (1974). Courts that have analyzed this issue have found that defamation is a claim arising under law, not equity, and for which claimants are entitled only to legal relief (i.e., monetary damages). *See In re King World Productions*, 898 F.2d 56, 60 (6th Cir. 1990) (holding that fact that a physician may be embarrassed by publication of video allegedly showing him engaging in medical malpractice did not justify temporary restraining order). Moreover, economic loss, even if difficult to quantify, is no basis for the entry of a preliminary injunction restricting speech." *Bollea v. Gawker Media, LLC*, 2012 U.S. Dist. LEXIS 162711, 13, 105 U.S.P.Q.2D (BNA) 1496, 40 Media L. Rep. 2601 (M.D. Fla. Nov. 13, 2012). Finally, Roca seems to have no trouble calculating its damages. Roca says that every person who views the reviews is a *certain* customer, and thus Roca loses one sale. If their claims are true, then the calculation is simple – count the views and multiply by the purchase price.²³

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²³ Defendants do not agree that this claim has any basis in fact or logic, but if it was good enough for the Plaintiffs to demand payment, they should be estopped from arguing that they now can't possibly do the math.

E. Plaintiff Fails to Pledge Security

Federal Rule of Civil Procedure 65(c) provides that a district court may issue a preliminary injunction “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined.” Fed. R. Civ. P. 65(c). A preliminary injunction is improper where a plaintiff “did not provide any such security, and the district court was unable to discern what amount was proper under Rule 65(c) because [the plaintiff] failed to adequately set forth facts on which the Court [could] make a reasoned determination as to the amount of security which must be posted.” *Jones v. Brown*, 518 F. App’x 643, 644 (11th Cir. 2013). That is where we are now.

Additionally, in the alternative, as this Motion was initially filed in state court, Florida Rule of Civil Procedure 1.610 requires a movant to give bond in an amount the court deems proper before issuing a preliminary injunction. Fla. R. Civ. P. 1.610(b). “The purpose of an injunction bond is to provide sufficient funds to over the adverse party’s costs and damages in the event the injunction is later deemed to have been improvidently entered.” *Bieda v. Bieda*, 42 So.3d 859, 862 (Fla.3d DCA 2010). A trial court may not enter a preliminary injunction without complying with the bond requirement. Roca Labs’ Motion includes no discussion of the bond requirement, as required under the Florida Rules of Civil Procedure.

In the event that this Honorable Court decides that it wishes to be the first court to ever sustain a prior restraint under the claims brought before it, the Court should note that Roca has brought at least one claim, FDUTPA, where the Defendant should have an opportunity to seek prevailing party attorneys’ fees. Given the shotgun pleading in this case, it is clear that this plaintiff will seek to multiply these proceedings out of any proportion that might be reasonable under the law. Accordingly, it is foreseeable that the prevailing party fees in this case will be

above \$200,000. Therefore, any bond should be in excess of \$200,000 for this alone, unless the Court wishes to make it clear that this case should end early, given its frivolous nature. Furthermore, if the statements are taken offline, the Defendant will lose months and months of viewers, and the suppression of such content will likely lead to at least a handful of victims with health problems from the concoction – which could have been avoided had the truth remained published. Therefore, Roca Labs should be compelled to place at least \$2.5 million in a “potential victims fund” bond.

III. CONCLUSION

Based on the foregoing, this Court must not issue an injunction. Plaintiff has failed to prove any of the elements necessary to obtain a preliminary injunction, as they have not demonstrated likelihood of success on the merits, they have not demonstrated irreparable harm, and they have not adequately balanced the relative harms to Defendants and the public, to demonstrate that a preliminary injunction is warranted. The public’s interest in free speech and debate would be seriously, and negatively, impacted by an injunction against Defendant in this case. The injunction Roca Labs wants would constitute an impermissible restraint on speech, one that the Florida courts, and courts around the country, have roudly rejected.

Respectfully Submitted,

Marc J. Randazza

Marc J. Randazza, Esq.
Florida Bar No. 625566
RANDAZZA LEGAL GROUP
3625 S. Town Center Drive
Las Vegas, Nevada 89135
Tele: 702-420-2001
Fax: 305-437-7662
Email: ecf@randazza.com

CASE NO.: 8:14-cv-2096-T-33EAJ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 18, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that a true and correct copy of the foregoing document is being served upon: Paul Berger, Esq. and Nicole Freedlander, Esq., counsel for Plaintiff, via transmission of Notices of Electronic Filing generated by CM/ECF and courtesy copies have been emailed to the following attorneys.

Paul Berger
P.O. Box 7898
Delray Beach, Florida 33482-7898
legal5@rocalabs.com

Nicole Freedlander
P.O. Box 402653
Miami Beach, Florida 33140
nicole@freedlanderlaw.com

Respectfully Submitted,

Marc J. Randazza

Marc J. Randazza, Esq.
Florida Bar No. 625566
RANDAZZA LEGAL GROUP
3625 S. Town Center Drive
Las Vegas, Nevada 89135
Tele: 702-420-2001
Fax: 305-437-7662
Email: ecf@randazza.com

RANDAZZA | LEGAL GROUP

EXHIBIT 1
Declaration of Dr. Thomas Parisi

DECLARATION OF DR. THOMAS PARISI
IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
FOR ENTRY OF A TEMPORARY INJUNCTION

I, DR. THOMAS PARISI, being over 18 years of age and competent to testify about the matters contained in this declaration, hereby state as follows:

PROFESSIONAL BACKGROUND

1. I am a board-certified physician with a practice focused upon internal medicine.
2. I received my Bachelors of Science degree from Widener University in 1996 and my Masters of Science degree in Microbiology from Thomas Jefferson University in 1998.
3. I graduated from University of St. Eustatius School of Medicine in 2001.
4. I attended medical school at St. Christopher's College of Medicine in Cambridge, England and graduated in 2002 with a Doctorate in Medicine.
5. I completed my residency at the University of Nevada, Reno in 2005.
6. I currently practice medicine with Las Vegas Vein and have done so since its inception in 2007. I am additionally a practicing physician at the Desert Springs Hospital Wound Care Center and am affiliated with St. Rose Dominican Hospital, Sunrise Hospital, Spring Valley Hospital, and Summerlin Hospital, all in Clark County, Nevada. I am an adjunct professor at Touro University Henderson, the University of Nevada, Las Vegas, and the College of Southern Nevada.

ASSIGNED TASK AND MATERIALS REVIEWED

7. Counsel for Defendant Opinion Corp. ("Opinion") in the matter entitled *Roca Labs, Inc. v. Consumer Opinion Corp., et al.*, Case No. 8:14-cv-2096-T-33EAJ, has requested that I examine and opine upon a diet product manufactured and marketed by

Plaintiff Roca Labs, Inc. (“Roca”) that Roca promotes as an alternative to gastric bypass surgery. To complete this task, I examined the following:

- a. Roca’s website, located on the World Wide Web at <rocalabs.com>;
- b. YouTube videos purportedly published by Roca: (1) *Weight Reduction for Diabetes by Roca Labs*,¹ (2) *Dr. Ross about Gastric Bypass NO surgery side effects/complications*,² (3) *What is Gastric Bypass NO Surgery by Roca Labs?*,³ (4) *How to Create a Gastric Bypass Effect with Roca Labs*,⁴ (5) *Active Ingredients in the Roca Labs NO Surgery Gastric Bypass Formula*,⁵
- c. Robert B. Saper et al., *Common Dietary Supplements of Weightloss*, American Family Physician, Vol. 70, Iss. 9, 1731-38 (2004);
- d. Karl H. Rahn et al., *How to Assess Glomerular Function and Damage in Humans*, Journal of Hypertension, Vol. 17, Iss. 3, 309-17 (1999);
- e. Robert L. Davidson, *Handbook of Water-Soluble Gums and Resins* (1980);
- f. National Institute of Health, Office of Dietary Supplements, *Dietary Supplement Fact Sheet: Vitamin B12*, available at: <ods.od.nih.gov/factsheets>;
- g. Hsiao-Ling Chen et al., *Supplementation of Konjac Glucomannan into a Low-Fiber Chinese Diet Promoted Bowel Movement and Improved Colonic Ecology in Constipated Adults: a Placebo-Controlled, Diet-Controlled Trial*,

¹ <youtube.com/watch?v=F7HQx2oZxY8&list=UU17sVLkpP6ivf1P8BIyPW_g>.

² <youtube.com/watch?v=sfZpZ-0zTus&list=UU17sVLkpP6ivf1P8BIyPW_g>.

³ <youtube.com/watch?v=gJ9UeimqSqs&list=UU17sVLkpP6ivf1P8BIyPW_g>.

⁴ <youtube.com/watch?v=h6uKkIRyYwk&list=UU17sVLkpP6ivf1P8BIyPW_g>.

⁵ <youtube.com/watch?v=0wNYozD1XEM>

Journal of the American College of Nutrition, Vol. 27, Iss. 1, 102 (2008);

- h. Customer complains regarding Roca's weight loss product that were provided to me by Opinion's counsel, and which are attached to this declaration as Exhibits B, C, D, E, F, G, H, and I.

ROCA'S PRODUCT

8. Roca sells an unnamed diet product on its website that it claims is an alternative to gastric bypass surgery and claims the "components are Guar Gum, Konjac, Inulin, Beta Glucan, Xanthan Gum, Maltodextrin, Vitamins B-6, B-12, C," and natural and artificial flavors (the "Product").⁶ Roca additionally claims that its Product contains "fibers [that] are activated by large amounts of water and occupy most of the stomach, leaving only 20% available for food intake."⁷

9. Roca is claiming that its dietary supplement, which consists primarily of industrial food thickening agents, expands and increases the viscosity of water. In other words, it operates under the principal that ingesting Roca's product will expand cause it to expand in the user's stomach, leaving her with no room or desire for anything else, thus prompting weight loss which renders gastric bypass surgery unnecessary.

10. To a layperson, Roca's weight-loss claims likely make logical sense, given that the Product fills the stomach up to 80% capacity with high-fiber, indigestible materials.

11. However, based upon my review of the Product and its ingredients, it could lead to health problems in some individuals, including gastrointestinal distress.

12. Moreover, based upon the ingredients contained in the Product, it could also cause additional unintended side effects in a large number of users, including diarrhea,

⁶ <youtube.com/watch?v=0wNYozD1XEM>

⁷ *Id.*

bloating, intestinal discomfort, gas, constipation, intestinal blockage, dehydration, headaches, and dizziness.⁸

13. Certain individuals are pre-disposed to being higher risk for complications and suffering negative side effects of use of the Roca product such as those suffering from autoimmune disorders, pregnant women, the elderly, etc. These individuals have a heightened need to be aware of any possible health risks.

14. Based upon my review and research of the ingredients contained in Roca's Product, most of its ingredients are useless for the promotion or maintenance of weight loss:

- a. **Guar Gum:** While it cannot be absorbed by the digestive tract, guar gum is ineffective for weight loss, and physicians should discourage its use as a weight loss aid. *See* RB Saper et al., *Common Dietary Supplements of Weightloss*, 70 *Am Fam Physician* 1731 (2004).
- b. **Inulin:** Inulin is typically used to diagnose kidney function. While it passes freely through the kidneys and is not absorbed by the body. However, there is no clinical data on the use of inulin to promote weight loss. I believe that it would be ineffective for that purpose. *See* KH Rahn et al., *How to Assess Glomerular Function and Damage in Humans*, 17 *J Hypertens* 309 (1999)
- c. **Beta Glucan:** Beta glucan, which is essentially seed husks or barley, may cause small reductions in LDL (or "bad") cholesterol when taken orally, but the sum of existing positive evidence is suggestive and not definitive. Moreover, short-term use of beta glucans does

⁸ <[youtube.com/watch?v=sfZpZ-0zTus&list=UU17sVLkpP6ivf1P8BIyPW_g](https://www.youtube.com/watch?v=sfZpZ-0zTus&list=UU17sVLkpP6ivf1P8BIyPW_g)>.

not appear to promote weight loss. *See* Robert L. Davidson, *Handbook of Water-Soluble Gums and Resins* (1980).

- d. **Xanthan Gum:** Xanthan gum is most commonly used as a food additive, particularly as a thickening agent (in salad dressings, for example), or as a stabilizer in other products to keep ingredients from separating (in cosmetic products, for example). There is no available evidence or clinical data indicating that it is effective in aiding weight-loss. *See* Robert L. Davidson, *Handbook of Water-Soluble Gums and Resins* (1980).
- e. **Vitamins B-6, B-12, and C:** There is no solid evidence that Vitamins B-6, B-12, or C promote or aid weight loss. *See* National Institute of Health, Office of Dietary Supplements, *Dietary Supplement Fact Sheet: Vitamin B12*, <ods.od.nih.gov/factsheets/>.
- f. **Konjac:** Konjac is essentially a Chinese laxative. Thus, it does increase bowel movements in constipated adults, which can cause weight loss. However, no competent medical physician would recommend regular use of it (or any laxative) as a treatment plan for weight loss. *See* HL Chen et al., *Supplementation of Konjac Glucomannan into a Low-Fiber Chinese Diet Promoted Bowel Movement and Improved Colonic Ecology in Constipated Adults: a Placebo-Controlled, Diet-Controlled Trial*, 27 J Am Coll Nutr 102 (2008).
- g. **Maltodextrin:** Maltodextrin is often used in commercially available protein shakes and similar products. However, because it contains

high-glycemic carbohydrates, intake of maltodextrin would typically be avoided in individuals trying to achieve weight loss.

- h. **Natural and Artificial Flavors:** Roca provides no indication of what these are and whether or how they would promote weight loss.

ROCA'S "GAG CLAUSE" REGARDING THE PRODUCT

15. Roca's Product is promoted on its website as a "nutraceutical." Most nutraceuticals, including Roca's Product, have not been approved by the Food and Drug Administration (the "FDA") and are not regulated in any significant way.

16. As such, many potential consumers will rely upon feedback from prior users of the Product to determine whether the Product will be effective or will cause adverse side effects.

17. In the absence of clinical trials, there is no way for potential users of a product to measure the efficacy or safety of that product without feedback from prior users. While consumer reviews are non-scientific (and potentially biased), they still create a record of trends that can provide at least some degree of predictability to a potential user.

18. Without feedback from prior users, potential users may have access to no information about the Product with the exception of promotional materials from Roca itself.

19. Lack of information from prior users of the Product places potential users at greater risk of harm, as they will not be capable of evaluating the risks involved in using the Product.

20. The terms and conditions contained on Roca's website contain a provision whereby Roca will give purchasers of the Product a large discount if they agree that they will never criticize Roca or its Product in any way.

21. I believe that this provision prevents potential users of the Product from obtaining information from prior users regarding the potential side effects and adverse effects of the Product.

22. It is unethical for a health care professional to take steps to hide the side effects of any medication or treatment from a patient.

USER COMPLAINTS ABOUT THE PRODUCT

23. Counsel for Opinion provided me with 8 sample customer complaints regarding the Product. I have observations on several.

24. With regard to the medical issues the customer complaints describe, there is a chance that they are true, particularly given that there is no data to suggest otherwise. While most of the ingredients of the Product are merely useless, konjac could certainly cause gastrointestinal distress, including bowel obstruction and ulcers, and excess vitamin intake (particularly of vitamin C) is also known to cause ulcer formation.


25. In the Third Customer Complaint,⁹ the user notes that, when ordering the Product, Roca forces the user to check a box stating that Roca will not be held liable for any adverse effects caused by the Product. It is both unethical and immoral for Roca to attempt to absolve itself from liability for harm it may cause to users of the Product.

26. In the Sixth Customer Complaint,¹⁰ the user attaches an email from Roca stating that the Product “always work[s]. ALWAYS.” This does not conform to a medical standard of practice, and it is irresponsible, at best, for Roca to make such statements.

⁹ Exhibit D

¹⁰ Exhibit G

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:

899662D327F9426...

Thomas Parisi, M.D.

Executed on September ^{9/18/2014} ____, 2014 in Las Vegas, Nevada.

EXHIBIT B

FIRST REPRESENTATIVE CUSTOMER COMPLAINT



Roca Labs - You will never get a representative to discuss a refund. These people are crooks.

15 of 32 Roca Labs Reviews

670 reviews 3 photos Mount Holly, New Jersey Beauty Centers and Spas Product Refund

Mar 22 review #48045 by anonymous **Disappointed**

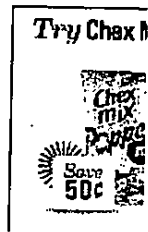
I ordered this product in good faith, My medical doctor looked at this product and said absolutely do not use because of my personal issues.

I called the salesperson three times and three times she told me to explain the situation through the contact on the net site. Well, no one has ever tried to contact me. I sent the package back two times and twice it came back with no address found. This cost me twenty seven dollars.

They billed my charge almost six hundred dollars for the special that was only to be four hundred. These people don't care and they need to be sued. DO NOT TRUST THESE PEOPLE. They are,

Crooks. The sample they sent me to try n the package was gritty and did not dissolve.

The only contact from this company is a check of reimbursement. Other than that, a class action lawsuit would be just fine.
74b8f6a



Roca Labs Re
ROCA LABS DCE
Roca Labs - Becor
unreachable when
problem
Roca Labs - Revis

- b. Roca Labs - Don't buy anything from Roca Lab they just sell a regular shake they are stealing your money (See Review #475672 by anonymous).
- c. I have a friend working in the warehouse of this product, he told me that is unsanitary they don't use gloves and hair nets to assemble the packages which comes with containers and spoons, and the product is a fraud doesn't work! (See Review #475672 by anonymous).

EXHIBIT C

SECOND REPRESENTATIVE CUSTOMER COMPLAINT



Roca Labs - Got scammed and sick from this JUNK

11 of 32 Roca Labs Reviews

994 reviews 7 photos Johnson City, New York Weight Loss Programs Weight Loss Products

Richmond, Virginia [Contact](#) [Follow](#) [Share](#)

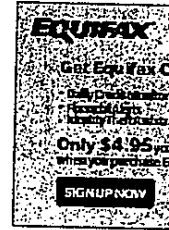
Product made me ill enough to seek medical attention after following all directions to the letter. They will not cancel my last payment NEXT month and threatened me with a lawsuit.

SURPRISE!

They are not the only ones with experienced lawyers. Anyone wanting to start a class-action against them over the business practices?

The product tastes bad and does not dissolve well, their customer service dept is a bunch of scammers and crooks trying to prey on overweight people that are desperate to lose weight and their policies are written the way that they are because THEY KNOW IT!

Do NOT give these people your credit card number... You will only end up regretting it! 74b545D.



Reviews from Johnson City, New York

Concerned Reviewer May 16

Although I have not tried the product for myself, I was intrigued about it after I saw the Youtube ad for the product. The first thing I always check for is if there is a scam involving a particular product. When I did a Google search for the product to see the review, I got extremely suspicious when I had a hard time finding a negative review. At first I had thought that perhaps they were using certain techniques to push negative reviews off the first search results page. So I checked a few more results pages and no negative reviews in sight. That was very suspicious to me. There should have been at least one negative review. Then I saw Roca Labs terms of use of its' product and it's bloody insidious. If you use the product, according to the mandatory contract that you have to sign you can't post a negative review at all or they will either charge you a higher price or sue you for "slander and defamation." Let me repeat that again THEY WILL SUE YOU FOR A NEGATIVE REVIEW. You know what that is? Censorship. CENSORSHIP UNDER DURESS. And that's just bloody wrong. You put a product out on the market you have to expect that not everyone is going to like your product and it is within their right as a consumer to be able to talk about it. That's why we have rating systems on Amazon. That's why we have things like Metacritic and Rotten Tomatoes. These things are in place to inform the consumer. If you're going to buy in to a product or service, a negative review gives you an... [Show more](#)

7 2 Reply

Anonymous · Concerned Reviewer May 23 · Chicago, Illinois
THANK YOU!!! I am running away from this scam!

4 1 Reply

concerned May 03 9:41am, Iowa

EVERYONE remotely interested in this product, please read the company's Terms and Conditions first!!! Many fees involved such as: total cost of product \$1,500, unpaid bill/collection fees of \$3,200 and defamation/slander on web fee of \$100,000!!!!!!!

Mini Gastric Bypass Alternative

YOU ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ THE AGREEMENT BEFORE MAKING A PURCHASE AND AGAIN PRIOR TO USING THE FORMULA/SUPPORT. PLACING AN ORDER INDICATES THE UNCONDITIONAL ACCEPTANCE OF THE AGREEMENT BY YOU AND ANY ASSIGNS. DO NOT PURCHASE THE FORMULA IF YOU DO NOT AGREE TO BE BOUND BY THE ENTIRE AGREEMENT.

You agree that the use of The Website is at your sole risk. Neither The Website, nor any of The Company's officers, directors, employees, agents, third party content providers, merchants, sponsors, licensors, contractors or affiliates warrants that The Website will be error-free or uninterrupted. The Company also DOES NOT guarantee any result or outcome resulting from the use of this Website, The Formula or The Support.

The Company cannot guarantee results because your success depends on your usage of The Formula according to instructions and your successful adaptation to new eating habits. You agree that, because The Company makes NO guarantees regarding results, and because of The Company's clear No Return/No Refund policy (see below), you have NO right to dispute payment for the Formula/Support. You agree that disputing any payment causes damage to The Company and gives... Show more

4 1 Reply

Anonymous concerned May 22 9:56am, Washington

HOLY ****.....It is obvious that the company knows the product is a scam or they wouldn't have such terms and conditions!!! THANK YOU FOR HEADS UP!!!

5 1 Reply

Anonymous 15 hours ago

THESE PPL ARE SCAMMERS THIS PRODUCT IS ***!!!!...TAKEING ADVANTAGE OF OVER WEIGHT LOW SELF ASTEEM PPL LIKE THAT YOU SHOULD BE ASHAMED OF YOURSELVES!!!!!!!!!!!!!!!!!!!!!!!

0 0 Reply

EXHIBIT D

THIRD REPRESENTATIVE CUSTOMER COMPLAINT



Roca Labs - Bowel Obstruction from ROC formula

7 of 32 Roca Labs Reviews

1372

10

Drug Stores and Drugs Roca Labs

REVIEW #483837 by anonymous

Anonymous

10/10



RUN AWAY FROM ROCA LABS AND BE AWARE OF THE POSSIBLE MEDICAL PROBLEMS THAT MAY OCCUR WITH CONSUMPTION OF THEIR FORMULA. The harsh formula doesn't digest and may cause bowel obstruction, which can result in death or a permanent colostomy!!!!

This company is selling a formula that is completely harmful to your body and they don't care...they only want your money!! Part of the ordering process makes consumers check the box that they agree to terms of "hold harmless" which means if you get sick or harmed from the product, the company isn't held accountable.

Please care about your health and body and don't consume the "special formula" from this company. At least talk to your physician about this product prior to ordering and consuming it for your own well being!
74:7554

Roca
ROCA
Roca
unread

Anonymous May 30

This happened to a family member of mine and we are currently in litigation. Just ALWAYS check with your physician on this product prior to consuming!

0 0 Reply

Anonymous Anonymous May 31

Regarding Roca Labs and Bowel Obstruction post above: Since there is no way of deleting or editing a post, this is the only way to edit it. First, THIS WAS NOT ME, but a relative that took the formula without consulting a physician and couldn't digest the product at all and had severe GI pain, which was determined to be a bowel obstruction. The physician immediately determined that the formula was too harsh!!! After much medical treatment, tests and procedures, the bowel obstruction is now thought to be from many factors such as taking the formula without a doctor's approval, not having proper fluid intake, underlying digestive diseases and past abdominal surgery complications (which legal representation is addressing). I don't know if there is a medical questionnaire when ordering the product but PLEASE answer those questions honestly and consult with a physician before ordering and taking this and all products!!!!

0 0

EXHIBIT E

**FOURTH REPRESENTATIVE
CUSTOMER COMPLAINT**



Roca Labs - Company doctor FINESMITH lost license over CHILD ***

20 of 32 Roca Labs Reviews

1475 REVIEWS 2 COPIES Oklahoma City, Oklahoma Weight Loss Programs Weight Loss Pills

Dec 20, 2013 review #465926 by anonymous

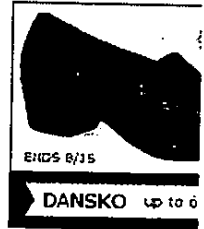
Rocalabs is associated with one Dr. Ross Finesmith - which appears to be the same doc as here:

http://www.newjerseynewsroom.com/state/nj-doctor-ross-finesmith-pleads-guilty-to-child-***

>> A Somerset County [New Jersey] doctor pleaded guilty Thursday to possessing child *** , state Criminal Justice Director Stephen J. Taylor said.

Ross B. Finesmith, 49, of the Basking Ridge section of Bernards, a pediatric neurologist, pleaded guilty to one count of fourth-degree possession of child *** before state Superior Court Judge Stephen B. Rubin in Flemington.

Under the plea agreement, Finesmith will be permanently barred from practicing medicine in any state ...
74d10b7



Reviews from Oklahoma City, Oklahoma

Termink - Schedule an appointment week prior, no hours and nothing

Date Center - Blank space



Roca Labs - Could not return product.

21 of 32 Roca Labs Reviews

1295 REVIEWS 12 COPIES \$500 COPIES Hazelton, Michigan Weight Loss Programs Diet Supplement

Dec 18, 2013 review #464918 by anonymous

Per Roca Labs I "qualified" for thier product.After recsiveing it I read all of the information provided and it scared me.

I talked to my MD and was told not to use this product. I contacted the company to return it and not only was that not an options they were very rude about it. I then contacted my credit card company and explained what had happened and they suggested I file a dispute. The dispute was answered with pages and pages of documentation that it stated I agreed to prior to purchasing the products.

It is like they were more prepared to justify their sale than to help the customer.

In the end, I am stuck with an entire box on unopened products.I am afraid to attempt to resell it due to the legal consequences that could result if it harmed the buyer.
74d158b

Product Name: Roca Labs 1



Reviews from Michigan

Pertagook - I

Copertone - cars have n

EXHIBIT F

FIFTH REPRESENTATIVE CUSTOMER COMPLAINT



TO ALL WHO TREID ROCA LABS BEWARE

22 of 32 Roca Labs Reviews

2692 **15** **9** Las Vegas, Nevada **2** Weight Loss Programs **2** Weight Loss Pills

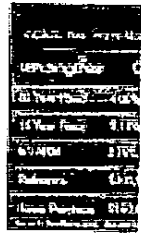
Nov 05, 2013 **Anonymous** **1** **0** **0**

Hello everyone my name is Jerome, and I hardly complain about anything, I am a devote catholic a proud member of the knights of Columbus, a true gentleman, I was 6 foot 2 inches, and weight 288 lbs. I was teased my entire life about being overweight, I tried jenny craig, nutria system, and nothing worked, I was a former full back for the university of Michigan, and got injured, since then I developed fibromyalgia, so that is how I got overweight, I am a professional jazz bass player and singer and needed to lose the weight and wanted to get to about 215 to 220 so I tried roca labs,

it was very expensive, after the 3 months I lost about 15 lbs, but I did finish it the day after I was sadded because I really staved myself, anywhy it is the first day I was off the diet in 3 months so I ate a steak sandwich, later that day, my stomach hurted so bad I almost fainted, 2 weeks, later the pain as got worse, I seen 2 doctors, and both said, you may have developed my ulcer, I have to wait a month to go for a colonoscky and down my throat. I ask all of you PLEASE DO NOT TAKE ROCA LABS, in 3 days after the un bearable pain started my stomach blow up 5 inches my pants are all tight on me, yet the legs and the butt are big on me, and I am 2 lbs less than I was when I ended the diet, so please I am a young man, if anyone had a issue as I wrote of please get back to me, I have to wait to dec. 12 to have the tests done and the paid is so bad I fainted twice, and I am a strong man, a ex football player, please I am going to be a father, if anyone had these symptoms please let me know

thanks and good luck and never go on this diet

jerry
7d215s



Reviews from Nevada

Letipra Gateways contact to commu

Aerotek - closed c

Allegiant Air - unh on July 8 night 881 to Bellingham WA

Timshare Liquite terrible, terrible

Dollar Rent A Car Experience

More >

Anonymous Nov 05, 2013

I Went to see my Dr. today after 7 hours in the ER yesterday, both doctors told me that seen so many people in the ER from Roca Labs, I am going to a indoscopic next week, to see if I have a ulcer, my dr, who is one of the best in this state, told me he has see this so many times, PLUS IF YOU HAVE A STOMACH PROMBLEM AND NOT OVER 100 LBS OVERWEIGHT DO NOT USE ROCA LABS, IT DONE ALOT OF HARM TO ME, I HAD 3 MORPHINE INJECTIONS,

2 0 Reply

EXHIBIT G

SIXTH REPRESENTATIVE CUSTOMER COMPLAINT



Roca Labs - Side Effects

16 of 32 Roca Labs Reviews

941

5

San Jose, California

Drug Stores and Drugs

Side Effects

Mar 27 7:56 AM & Karen | **Disagree** |

I bought the Roca Lab product to try it out. Unfortunately, I had gastrointestinal side effects from the product. Therefore, I emailed the "chat" line with a simple question about the return policy. Now, I admit that I did not read closely the return product but the message I received was rude, demeaning, and definitely not supportive. Here is my point of this complaint. I spent a lot of money and do not expect to be treated in such an unprofessional manner.

First the company did not assess why I was asking the question but jumped into a defensive dialogue of why the product was successful and surely I was the one who had the problem. I am concerned because I might have had a life-altering problem from the product and they would not know or understand why I was asking the question. Here I am ingesting an "unknown" product, are they not concerned? What is the company's responsibility? Instead I was "lectured" on how fat I am and how I let this happen to me (see email message below). First, as one who has expertise working with patients who need to change detrimental lifestyle behaviors, this approach is not necessary, helpful, consumer orientated, or research based. Additionally, documentation of weight loss for "success" and money return seems somewhat flawed. So, I only have to submit a before and after picture of myself in order to get money back if I lose weight (regardless of side effects). My only conclusion is that my side effects are not important to the company and I am not allowing myself to be successful. As a consumer, I am quite distressed that I spent this amount of money, have had side effects, and have been treated in this manner (see below). This is so contrary to any other product or medication requirement on the market. It is clear that there is no recourse and money lost. However, as a member of the health care team, I certainly will not encourage anyone to purchase this product.

K Brinkley PhD, RN, CNE

EMAIL message from Roca Lab: Mar 3 3:56pm

Hi Karen,

First, the Formula is designed to always work. ALWAYS. It will always expand in the stomach to leave little room for food intake. As explained, your commitment is a MUST. Some of the 70,000+ YouTube videos are posted on the success wall.

FYI -- 72% of users of the Formula that thought the Formula was not helpful at first, read

geegee Apr 17 9 New York, New York

OMG!!!! I cannot believe the unprofessional demeaning language used by this company! They use intimidation tactics and belittling to protect their product from complaints. Frankly, i don't care if this worked to give you the perfect body in 20 minutes after swallowing and tasted like strawberries.....their customer relations alone would never allow me to buy from them! I will be forwarding this info to everyone i know and on every social media site so that everyone will be aware of how awful they are and when they're all out of customers lets see how their attitude is!- SICKENING!!!!

Gina- a kind and considerate individual who has worked in the field of behavior modification for 15 years!!!!

3 0 Reply

Celi Apr 02 9 Plano, Texas

Its pretty obvious that this "Tracy" has never been over weight due to the fact that shes basically calling you out as a loser and failure good customer service requires compassion and this *** doesn't have it and has NO business giving anybody advice on this product shes never used so the information shes giving you is based on HER opinion not facts! Shes basing her facts on YouTube Videos lolol anybody can go on you tube and post whatever they want.

3 0 Reply

Anonymous Mar 26 9 New York City, New York

OMG! SO rude!

2 0 Reply

EXHIBIT H

SEVENTH REPRESENTATIVE CUSTOMER COMPLAINT



Roca Labs - Lost only 60 lbs, they promised 100 lbs+

19 of 32 Roca Labs Reviews

1670
REVIEWS

12
REVIEWS

\$140
WAS

Weight Loss Programs

Weight Loss Formula

Dec 20 Review #471620 [ChristianeDavis](#)

Hi my name is Jennifer and I would like to share my Roca Labs review. I've been fat for some time now and I wasn't able to lose the extra pounds. I tried dieting, working out and everything, but there was no progress. I needed to lose more than 100 lbs.

5 months ago I searched the web for some weight loss programs and I ran into Roca Labs. I kept on digging about the product and saw that they can help me lose that 100+ pounds, so a month later I ordered mine.

I used it and the results were great! It made drastic changes in my eating habits. I didn't have cravings anymore and I ate half of what I did before. For the first month I lost nearly 20 lbs and I was very happy about my purchase. The second month I lost another 20 lbs! In my third month I was down another 10 lbs, so that was 50 lbs under three months! Awesome :) At the end of my fourth month I lost another 10 lbs and my weight loss STOPPED. I've decided to get myself more of the formula.

I called them and explained my situation. They said that additional supply cost \$140. What?! I couldn't believe what I've heard! They don't provide me with the promised results, and now I have to pay extra for it?! I felt really angry! They should give me the additional supply for free because I did everything right the first time, and I'm still stuck with extra 40 lbs.

74c3d9



Roca Labs Review:

ROCA LABS DOES NOT

Roca Labs - Becomes or unreactive when there's problem

Roca Labs - Review from Alberta

Roca Labs - Review and Negative Experience from Angeles, California

Roca Labs Does Work



Roca Labs - Loss NO Weight

23 of 32 Roca Labs Reviews

2337
REVIEWS

15
REVIEWS

\$579
WAS

Weight Loss Programs

No Surgery Gastric Bypass Form

Oct 14, 2013 Review #372493 [Wendaberein](#)

Your product does not work for me. Spent all that money for nothing.

Yes I was full all the time, but that was the 12 bottles of water I was drinking a day. Tried everything to make the product dissolve, it stayed clumpy.

The anti craving powder doesn't mix well no matter how much you shake it. I stay bloated all the time, like I'm 4 months pregnant, I have diarrhea all the time, severe cramping, headaches.

All this not a pound lost. Do everything they tell me to do and nothing. No results what so ever!

74d632a

I had the same issue

Add comment

Report

R
R
R

EXHIBIT I

EIGHTH REPRESENTATIVE CUSTOMER COMPLAINT

Stomach Sludge employee Nov 24, 2013 9 Ronda, North Carolina

Roca Labs should be banned by the FDA! I worked for this company and they are NOT FDA approved! They state they are but are NOT..

BEWARE.. you are putting your health at risk if you drink this stuff. The stuff all the employees call "Stomach Sludge". It only sits in your stomach, expands, and then hardens. I've heard where this powder gets into your stomach and attaches unto the wall of your stomach causing stomach ulcers and tumor like protrusions... Protect yourself and DO NOT DRINK this stuff!

They should be arrested for being allowed to sell this dangerous *** to people. It's NEVER BEEN APPROVED by any FDA organization!

Anonymous Dec 04, 2013 9 Phoenix, Arizona

I have proof from 3 doctors that it happened, due to roca labs diet, my dr,said several of his patients had the same or almost the same issue, I advise people who have or have had any issue with the stomach to please not use this product, the costumer service is from India, and they have no idea what they are talking about, hey say no side effects, well yes I did lose weight after however, all I am eating is chicken broth

1 0 Reply

EXHIBIT J

ROCA PURCHASE AGREEMENT

PERSONAL TERMS, CONDITIONS & DISCLAIMERS AGREEMENT

USV2.0 June 2014

SUMMARY

- Roca Labs believes that all means are Kosher in the fat fight and the "straight in your face" attitude is the only way. Fat is Unhealthy & Ugly. If you feel insulted, you should not consider buying.
 - The Roca Labs Mixture ALWAYS works in limiting stomach space and it is UP TO YOU to decide on dosage and frequency, to serve/feed yourself small food quantities and avoid any fatty or high calorie foods in a similar fashion to post bariatric surgery. Success depends on following Instructions and being tuned to Suggested Use.
 - You may choose to pay the full \$1,580 price ("Full Price") for the Procedure or enjoy a "Subsidy" based on Terms such as: devotion to losing weight, making timely payments, approaching Roca Labs first and never be responsible for commenting anywhere negatively in any fashion. Failure to comply and you agree to pay immediately the Full Price and face legal demand for damages in the State of Florida.
 - Roca Labs loves rewarding for success so failure is not rewarded and Money Back policy is for proven success only - no returns are accepted once ordered.
 - Health Application questions can only detect obvious factors to deny you the purchase of the procedure but can NOT pertain or cover your PERSONAL medical or psychological obstacles.
 - The Procedure is VERY STRONG but your mind is stronger. Your commitment to follow Instructions and be tuned to Suggested Use is crucial. Unless you can call yourself "Fat" and feel that fat is ugly, we don't think you should buy the Procedure.
 - Results may vary and mainly depends on your commitment and medical condition. Before purchasing you should check Instructions, Suggested Use, Side Effects and consult with your doctor if necessary. Statements, other than clinical, have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.
-

This website, through the manufacturer and/or the distributor, jointly and individually ("The Website" or "The Company" or "We") are marketing The Company's products and offerings, which include, but are not limited to, the Roca Labs Procedure ("Procedure") and support services ("Support"). The Procedure and Support are available to Purchasers ("The Customer" or "You"), under all of the following personal terms, conditions and disclaimers ("Terms") and on these terms alone. Everything that The Company represents in the Terms and conditions or on The Website is accurate to the best of Company's knowledge. Customer will print and save the Agreement. You agree that the use of The Website is at your sole risk. Neither The Website, nor any of The Company's officers, directors, employees, agents, third party content providers, merchants, sponsors, licensors, contractors or affiliates warrants that The Website will be error-free or uninterrupted. The Company is clear that results depend on YOU and therefore DOES NOT guarantee any personal result or outcome resulting from the use of this Website, The Procedure or Support.

YOU ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ THE TERMS BEFORE MAKING A PURCHASE AND AGAIN PRIOR TO USING THE PROCEDURE/SUPPORT. PLACING AN ORDER INDICATES THE UNCONDITIONAL ACCEPTANCE OF THE TERMS. DO NOT PURCHASE THE PROCEDURE IF YOU DO NOT AGREE TO BE BOUND BY THE ALL TERMS.

Privacy

Your information will not be shared or sold for as long as you do not breach the Terms and we will have to use the information provided. See Privacy.

Health Disclaimer

The Procedure, Website and Support provide limited, non-medical, weight loss management assistance. Testimonials, experiences, videos and related content intended only to assist users in their personal weight loss efforts. The Company is not a medical organization and it's staff cannot give you medical advice or diagnosis. Nothing contained in The Website should be construed as medical advice or diagnosis and should not be interpreted as a substitute for physician consultation, evaluation, or treatment.

The Formula should be purchased ONLY after reading the possible Side Effects and the Instructions. You are urged and advised to seek the advice of a physician before beginning any weight loss effort or regimen and to direct the physician to review The Website. The Website and The Formula are intended for use only by healthy individuals. Customers with health conditions are specifically warned to seek professional medical advice prior to initiating any form of weight loss effort or regimen.

The Customer agrees to make proper use of The Formula according to the instructions of use, which are

provided with The Formula and appear on The Website, in order to maximize your results. The Company has no knowledge of The Formula causing any serious side effects. If The Customer has any medical-related complaint after using The Formula, the Customer agrees to provide us with the following information:

1. A physician's report stating that your reaction/symptoms are a direct result of using the Formula;
2. All medical and other related records relating to the issues you had with the product;
3. All of your medical records relating in any way to health, weight-loss, weight, digestion and nutrition issues for the last five years;
4. A sworn and notarized statement by you containing the following:
 - i. **A breakdown of your exact diet, including amount and times of water and food intake, during the entire time you used The Formula;**
 - ii. **A breakdown of the exact schedule, dosage and manner in which you took the Formula every day that you took it;**
 - iii. **Your age, weight and height at the time you began using the Formula.**

By purchasing the Formula you agree to these specific terms and acknowledge that the Company would not have sold The Formula without your agreement to same.

The Company cannot guarantee results because your success depends on your usage in accordance with Suggested Use and your successful adaptation to new eating habits. You agree that, because The Company makes NO guarantees regarding results, and because of The Company's clear No Return/No Refund policy, you have NO right to dispute any payment. You agree that disputing any payment causes damage to The Company and gives The Company the right to seek compensation from you for The Company's damages. In the event that you dispute payment, then The Company has the unfettered right to revoke the discount you were awarded and you shall be liable to the Company for the full sales price of \$1,580 .

You agree that if there is a problem with shipping, you will contact The Company via Customer Care on The Company's Website, in writing, and allow The Company 7 days to research and address the shipping issue. You also agree that if there is a shipping issue, you will file a claim with the United States Postal Service and keep The Company apprised of your efforts so The Company may help you address the issue and reship the Formula, if necessary. You agree, however, that a shipping issue does not give you the right to withhold or dispute the charge with your credit card

company or with PayPal. You agree that doing so would cause damage to The Company and will give The Company the right to seek compensation from you for The Company's damages.

Your Commitments

By purchasing the Procedure at the you have obligated

Conditional Discounted Price

The price for The Formula and The Support is \$1,580.00. You may purchase The Formula and The Support at full price and without conditions, or you may elect to purchase The Formula at a reduced subsidised rate ("Conditional Price"). The marketing department allocates funds from its marketing budget to subsidise the Formula instead of spending the money on advertising because it hopes to gain more positive "word to mouth" customers by making the Formula more affordable. The Subsidy ("Subsidy") is the the difference between what you pay and \$1,580. We are also providing this deeply discounted Conditional Price because The Company can better manage its risks and resources, and reduce The Company's legal expenses. In exchange for this Conditional Price, you explicitly agree to all of the following:

- (1) You are representing to The Company that you are suitable to use The Formula and The Support, based upon the terms, conditions and instructions contained in this Agreement, and that you do not have any psychological or physical disorders that may interfere with your success in using The Formula and The Support.
- (2) You will follow the Suggested Use that come with The Formula and that are explained in detail on The Website. We will support you.
- (3) You expect to have a positive outcome by reducing food consumption and improving your eating habits and you will avoid eating ANY fatty or high calorie foods and will restrict yourself to eating less than 1,500 calories a day. You will also engage in daily 20-30 minutes exercise.
- (4) You agree that we can use any and all information relating to your success in the Company's marketing efforts. This can be done with a screen name of your choice but with real pictures and video.
- (5) You agree that regardless of your outcome, you WILL NOT speak, publish, print, blog or write negatively about The Product or The Company in any way.**

Any violation of this provision of the Agreement is deemed a material breach and you agree that The Company has no adequate remedy at law. You further consent to and agree to entry of an injunction by a Court of competent jurisdiction in enforcement of your violation of this term and condition.

(6) You agree that your Last Payment ("Last Payment") in the amount equals to the Subsidy (the difference between the Conditional Price and \$1,580) will occur 30 days from your last payment. Roca Labs agrees to waive this last payment if you make all your payments on time, avoid any public negative comments and comply with the Terms herein. Roca Labs will exercise this right within 12 months from the time the Last Payment is due.

(7) If you breach this Agreement, you agree to pay the full price for The Formula within 3 business days of demand, plus any expenses we incur in resolving the issue. In addition, we retain all legal rights and remedies against you for breach of contract and any other appropriate causes of action.

Terminology

Roca Labs® terminology is used to simplify understanding, visualizing and believing in your success based on the Terms, Roca Labs® Mission Statement and doctrine to success

- **Roca Labs® Procedure** refers to the entire program for losing weight, and includes our trademarked Formula, Anti-Cravings®, supplies, recommendations, guidelines and reward system for the weight loss process.
- **Roca Labs® Formula** is the powder prepared with liquid to create the Roca Labs® Mixture that, when ingested, results in the gastric bypass effect to limit stomach space and food intake.
- **Activator** is the container used to activate the Formula and turn it into a Roca Labs® Mixture dose.
- **Anti-Cravings®** is the proprietary formula intended to balance blood sugar levels and diminish cravings for snacks or sweets. This may be particular benefit during pregnancy and for diabetics.
- **Small Stomach** term is used to describe the feeling of a smaller stomach space with a lower threshold for satiety, even though the physical pouch size remains unchanged.
- **Shrinking Stomach™** trademark process describing the need for less food to reach a feeling of "being full". It can help reset the "appetite thermostat" so one won't feel as hungry. Over a period of 3 to 6 months one's stomach feels smaller with smaller food quantities needs to reach satiety. The physical stomach pouch size is unchanged without a surgery.
- **Stomach Space** available is a self estimate intended to create a visualization in order to determine the dosage and mainly the commitment to eating much smaller portions that day.
- **FDA Approved** Roca Labs® believes in following FDA guidelines in production and even more, in making medical claims. Though Roca Labs® Formula is extremely effective and should be used carefully as you would a drug, it does not require a prescription as it is classified as a food supplement.
- **Results may vary. Description/Facts/Statistics refer to a successful regime.**
- **Success Rate** and stats are either based on clinical studies of the formula's ingredients or the general experiences of more than 100,000 applicants.

General

Once you place an order, you are entitled to Customer Care /Support. Generally, Customer Care/Support is available 24 hours, 7 days a week. We will make every effort to respond to you within 24 hours of any written contact. **For the protection of The Company and you, The Customer, after your order has shipped The Company requires that all contact between you and The Company must be in writing with Customer Care /Support through The Website ONLY.**

The Formula is not a drug, medical treatment or a surgery. Rather, it is a natural alternative that causes people to eat less by reducing available stomach capacity, providing a sensation of fullness, and creating an opportunity for psychological strengthening.

The Formula is intended for healthy persons in general and is not suited for those with sensitivity to barley or to dietary fibers. You agree that prior to ordering the The Formula, you have consulted with and have advised your physician that The Formula components are: Guar Gum, Konjac, Inulin, Beta Glucan, Xanthan Gum, Maltodextrin, Natural and Artificial Flavors, Vitamins B-6, B-12 and C.

After your initial purchase, you may purchase The Support alone and/or additional one-month supplies of The Formula for the separate low price of \$50.00.

General Advice Only

Any verbal answers or information provided by order representatives or support staff (whether on the telephone or via electronic mail, or otherwise) are general and are specifically not intended to constitute medical or personal advice. Answers and comments from The Company staff members shall be limited solely to addressing questions and concerns as they relate to information contained on the Website, The Formula, and its usage. The Company representatives are not doctors. Any personal or medical questions should be directed to your personal physician. You should disregard any any such answer or remark that may be construed as medical or personal advice.

Concurrent Use of Medication

Please direct to your physician all questions about the proper use of your medication while using The Formula. The Website and the information contained on it should not be relied upon under any circumstances

as it relates to the use, combination, or cessation of use of your personal medication.

FDA Information

The Formula is manufactured in an FDA-compliant facility. The Formula is categorized as a "food additive" according to the definitions of the FDA and is approved for use without a prescription. The Formula contains only certified ingredients. These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease. This product should not be used in place of or as a substitute for recommendations by your healthcare professional. These statements are based on the known activity of the specific ingredients in this product. No clinical study has been performed on this product. The Company believes that the information provided hereunder complies with all federal laws and regulations.

Declaration, Purchase Agreement and Exceptions

You hereby affirm that, prior to using The Formula, you have read, agreed to, and fully understand the instructions and specific directions regarding the daily mode of use for The Formula. Additionally, you affirm that you have read and examined all of the components of the Formula and you are aware of the components, and that the components are not in contradiction with, or incompatible with your current health regiment, nor do the components interfere with, or alter the effectiveness of any medication or advice you have received from your physician.

The act of purchase constitutes an Agreement between you and The Company, whether the order was carried out via the Website or via the phone number provided on the Website. All communications, order requests, service requests, etc. are based on the regulations and instructions as stated on the Website.

You do not have permission or the right to sell, transfer and/or gift The Formula to any other person or entity. If, contrary to the terms herein, you sell, transfer or gift The Formula to another person, you will remain responsible for any breach of these Terms and Conditions by that person, and you agree to indemnify The Company against any claims brought by, or damages awarded to that person.

Updated Website Instructions

You commit to make use of the Formula according to the instructions, which are occasionally updated on The Website. The instructions on the Website are considered the most current and accurate, even to the exclusion of any other printed material, including labels printed on the Formula package. All communications, order requests, service requests, etc. are based on the regulations and instructions as stated on the

Website.

Drinking Plenty of Fluids

You understand that The Formula requires drinking larger than normal quantities of liquids; to prevent potential dehydration, which may lead to headaches. In extreme cases, additional complications may develop. You must drink no less than 3 glasses of water immediately after each dose of The Formula, and 6-8 additional glasses of water throughout the day for each dose of The Formula. It is emphasized that given The Formula's strength, you are solely responsible for drinking adequate amounts of liquids according to your bodily needs and with reactions changing in real time. Furthermore, you understand that The Formula will not work without drinking liquids as directed.

Formula Success

The expansion action of the active ingredients within the stomach is physical and conditional upon many factors, including drinking plenty of liquids. Despite the Formula being a physical aid (which is intended to decrease stomach space availability and leave the user with a feeling of fullness), the Customer hereby agrees to avoid consuming calorie-rich foods and/or overeating, so as to avoid expanding the stomach via forced consumption. The Formula will assist in weight loss as long as the diet process is dependent upon appetite and not upon psychological issues (such as depression, boredom, sadness, etc...) that may lead to overeating. **The Formula is not being sold to you on a trial basis. The Company makes no guarantee regarding the degree of success you will experience, if any.**

Personal Dosage

You hereby agree that by the act of purchasing the Formula, you are aware that prior to its regular use, you must carry out personal trials to determine the appropriate dosage for your body, which will aid in achieving a lack of appetite at a level, quantity and duration that you wish and is appropriate for your situation. You determine the level and duration of the lack of appetite according to individual will and physical ability.

Agreement Not to Comment Negatively

You understand and are aware that you are required to dose the formula, to drink large quantities of liquids, to avoid calorie-rich foods, to avoid overeating and to overcome psychological obstacles in order to achieve results. **You are also aware that The Company does not guarantee success.** Therefore, unless you purchased The Formula at full price, (1) no claim or complaint whatsoever will be accepted regarding the lack of success of The Formula, the service provided, the price, or any other negative comments relating to your purchase; (2) the announcement, writing, or publication of any such or other claim in any media or forum will constitute a breach of this agreement, to which you entered willingly and with full knowledge of the components of The Formula and its properties and The Support; (3) You agree that any such negative claim will constitute defamation per se, entitling The Company to injunctive relief and damages;

You agree that this clause is a material clause, and The Company relies on your agreement to these terms as a condition to offering and accepting from you a discounted price. **Do not purchase the Formula or Support if you do not agree to this "No Negative Comment Clause."**

The Order

After you have read the Terms, Conditions and Disclaimer and filled out the required order form and/or contacted the central phone service Order Department; a representative of the Order Department will contact you to verify and confirm the details of delivery. Answers given by Representatives are not a substitute for information contained on the Website, these Terms and Conditions, or any medical advice. If you provide incorrect identification details while carrying out the order, The Company cannot guarantee that the products will be delivered. You must confirm that you have provided updated and precise details. You agrees to pay the cost to re-ship and order if Customer provides incorrect or false information.

The Company's refund/return policy is explained fully below. Pursuant to Florida law, checks that are not honored for any reason will incur a Customer charge of \$25-\$40, or 5% of the amount of the check, whichever is greater. Should The Company institute legal or collection proceedings regarding returned/cancelled checks or cancelled/disputed credit cards/PayPal, the Customer will be responsible for all collection costs and attorney's fees, plus filing fees, for each returned or cancelled check or for each cancelled credit card/PayPal payment. You agree that you will not file a charge-back or dispute with the credit card company. Other than the above listed allowance for attorney's fees relating to payment/collection issues, neither you nor The Company shall be entitled to attorney fees for other disputes between the parties. Invoices are sent directly to the electronic mail boxes supplied by you and it is the your responsibility to provide an active/working email account.

Order Choice

Introductory Offer: You pay the deeply discounted Conditional Price for the Formula and The Support, and will receive Support from 8 AM to 8 PM Mon-Fri, within 24 hours of request, and \$100-\$200 money back for success video. There is no warranty and no guarantee as part of this price option.

Warranty Offer: You pay an extra \$180 for The Formula and The Support and will receive: (1) 24/7 Support, response within 5 hours of request; and (2) 50% refund if you contact Customer Care within 30 days and prove that you have any material side effects or you didn't lose at least 20 pounds; and (3) \$200-\$350 money back for success video.

Unconditional Offer: The price for The Formula and The Support is \$1580. You receive (1) 24/7 Support, response within 5 hours of request; and (2) 50% refund for any reason if you contact Customer Care within 30 days; (3) \$200-\$350 money back for success video; and (4) the Agreement not to Comment Negatively does not apply to you.

Service Hours

After your order has been shipped, the handling of the order goes to the Customer Care Department, which operates only in writing via The Website on the Customer Care page. The dedicated professionals who respond to inquiries understand the importance of providing accurate, timely and detailed responses. Therefore, all communication between you and The Service Department will be via electronic mail, which will allow the service professional time to research the issue and provide an appropriate response. Also, because the response might be lengthy, written communication will allow you to review and revisit the response throughout the process. This will also help to ensure the success of The Formula. Answers to inquiries are generally provided within 24 hours. If inquiries are made on a non-business day, responses are usually made by the end of the next business day.

Shipping and Delivery Times

The Company makes reasonable efforts to ship orders by the next business day. You are responsible for any taxes imposed, inside or outside of the United States. Orders are generally shipped via United States Postal Service (USPS) 2nd day service and follow the USPS Terms of Use. Once your order has been submitted, NO changes can be made to the order. At peak holiday times, shipping may take 1-2 days longer than usual.

If you choose the option to sign for the package, you must choose "signature required" when ordering. If the "signature required" option is chosen, The Company will guarantee delivery and will reship at no extra charge if the package is not received by you.

The Company offers waiver of signature solely for your convenience. You understand that if you waive signature for delivery of the product, The Company is without recourse in the event of loss or theft of The Formula once USPS confirms delivery. Therefore, if you waive signature and The Company receives confirmation of delivery from USPS, then you agree to bear the burden of loss or theft and to pay the charges for The Formula as agreed and will not to dispute payment for the product against The Company, and your recourse does not include the right to file a charge-back claim to your credit card company. If this occurs, The Company will reship the product for an additional charge of \$150 to cover The Company's expenses.

You acknowledge that The Company has no control over the delivery schedules of the USPS or any other

delivery service. The Customer will have no claim against The Company due to delivery disruptions.

On occasion, The Company's orders surpass The Company's production capabilities and your order may enter a short waiting list. Generally, this information is posted as soon as you enter the site.

Merchandise Return & Refund Policy

If you wish to cancel your order before it has been shipped, you must immediately contact the Customer Care Department via the Website in writing for a full refund. You agree that you WILL NOT contact your credit card company or PayPal in these instances, as you agree that the charge was valid and authorized at the time you placed your order. Refunds may take up to 10 days to process. Greater delays in refunds are likely to occur if you dispute a charge with PayPal as the funds are automatically put on hold until the dispute has been resolved.

You agree to CONTACT US FIRST with ANY QUESTION OR CONCERN before contacting your credit card company or PayPal to cancel or dispute payment. The Company retains the right to remedy any concerns you may have and you do not have the right to file a credit card or PayPal dispute. In the event that you file a credit card or PayPal dispute, you agree to authorize The Company to contact the credit card company or PayPal with your express authority to withdraw your dispute with the credit card company or PayPal.

An order is considered "shipped" once a tracking number has been assigned. If you cancel your order once the product has been shipped, then The Formula can be returned only in its original unopened shipping/delivery package, as stated explicitly on the package itself.

There will be no refund under any circumstances once the outer shipping package has been opened, even if none of the packages inside the box have been opened.

Customer returns of an unopened shipping package **must be made within 3 days of the receipt of the order.** Prior to return, you must (1) send The Company photographs of the shipping box clearly showing that the box has not been opened, and (2) obtain return shipping authorization from The Company in writing. You agree to provide The Company with a return tracking number as soon as you ship the product. The refund will

be limited only to the cost of The Formula minus the shipping charges and a 15% restocking fee. You will be solely responsible for the charges to ship the product back to The Company. There will be no refund of the cost of The Support under any circumstances.

As with any food, food supplement, diet aid or even gastric bypass surgery, it is expected that a certain number of users might not have a positive reaction to The Formula. It is also expected that, just like with any food, food supplement, diet aid or even gastric bypass surgery, there are a certain number of users who will not achieve the desired results. **Nonetheless, similar to purchasing an over-the-counter product or having gastric bypass surgery, no refunds will be considered under these circumstances.**

Responsibility

Use of The Formula should be made according to the instructions of use written on The Website. The Company is not accountable for your failure to follow the instructions. You will not have any claim, allegation or demand against the Company or its manufacturer due to the qualities of The Formula, its abilities, limitations or suitability to your needs and demands. The Company is not responsible for a measure of weight loss accompanying The Formula and The Support, since The Formula's success depends on external circumstances, such as instructed use, and personal physical limitations, outside The Company's control. Results, therefore, lie entirely in your hands.

Content Ownership

All of the content and products on The Company's Website are owned by The Company. The Company claims all property rights, including intellectual property rights, to its content and no person/entity is permitted to infringe upon those rights. The Company will prosecute to the fullest extent of the law anyone who attempts to use or copy The Company's property. You agree not to copy content from The Company's Website without The Company's permission. Any requests to use The Company's content should be submitted to The Company by e-mail from The Company's contact page.

Disclaimers of Warranties

PLEASE NOTE THE FOLLOWING IMPORTANT DISCLAIMERS OF WARRANTIES: THE FORMULA AND SUPPORT ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATIBILITY, SECURITY, ACCURACY OR NON-INFRINGEMENT. NEITHER THE COMPANY NOR ANY OF THE COMPANY'S AFFILIATES, LICENSORS, LICENSEES, SERVICE PROVIDERS OR SUPPLIERS WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE FORMULA &

THE SUPPORT IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, SUCCESS, OR OTHERWISE. NO ADVICE OR INFORMATION, OBTAINED BY YOU FROM THE COMPANY'S PERSONNEL OR THROUGH THIS WEBSITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.

If your jurisdiction does not allow limitations on warranties, this limitation may not apply to you. Your sole and exclusive remedy relating to your use of the site shall be to discontinue use of the site.

Limitation of Liability

You acknowledge your use of this Website is at your sole risk and that you assume full responsibility for all the risks associated with any of your use of this Website

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE COMPANY AND THE COMPANY'S AFFILIATES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF, OR RESULTING FROM, (A) THE USE OR THE INABILITY TO USE THIS WEBSITE; (B) THE USE OF THE FORMULA OR THE SUPPORT; OR (C) ANY OTHER MATTER RELATING TO THIS WEBSITE.

IN NO EVENT SHALL THE COMPANY'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, FOR NEGLIGENCE OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR THE FORMULA & SUPPORT. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE COMPANY'S WEBSITE, FORMULA OR SUPPORT, OR WITH ANY OF PROVISION OF THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS THE DISCONTINUATION OF YOUR USE OF THIS WEBSITE, THE FORMULA &/OR THE SUPPORT. IF ANY PORTION OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

Indemnification

You agree to indemnify, hold harmless and, at The Company's option, defend The Company and The Company's affiliates, officers, directors, employees, stockholders, agents and representatives from any and all third party claims, liability, damages and/or costs (including, but not limited to, reasonable attorney's fees and expenses) arising from your improper or unauthorized use of this Website, The Company's Formula, or The Company's Support, your violation of this Agreement, or your infringement, or the infringement or use by any other user of your account, of any intellectual property or other right of any person or entity. Your breach of the Agreement as it relates to your obligation to refrain from making, posting, or otherwise commenting negatively about the Formula, Website, or The Company, is deemed a material breach of the Agreement,

and you agree to pay all costs and attorney's fees related to The Company's subsequent efforts to enforce this term of the Agreement.

Testimonials, Pictures, & Demonstratives

The Customer's success in achieving their weight loss goal is very important to The Company. We know that visualization, instilling confidence and encouraging results is of the highest importance. Therefore, Along with the hundreds of actual Customers who have posted their success stories on YouTube and other media outlets, The Company invested in reproducing some of the successful results of our Customers. The Company utilized the work of some paid actors so the user can experience some of these success stories and use them as incentives to achieve their own weight loss goals. These testimonials and endorsements reflect the experience that many of our customers have reported to The Company. All content on the Website, whether text, image, or video, belongs to The Company and no one can use, transfer, or link to any part without express written permission.

Legal Jurisdiction

These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of laws. Any action seeking legal or equitable relief arising out of or relating to this Website will be brought only in the federal or state courts of the State of Florida. You hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action. A printed version of these Terms, Conditions and Disclaimer and related materials will be admissible in judicial and administrative proceedings based upon or relating to these Terms, Conditions and Disclaimer to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. For purposes of the litigation issues addressed herein, you waive any right to confidentiality.

Severability of the Terms & Conditions

If any part of these Terms and Conditions, and/or Disclaimers of use are determined by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions shall be deemed enforceable, valid and in full effect. The remainder of these Terms and Conditions, and Disclaimers are fully enforceable and legally binding.

BY CHECKING THE REQUIRED BOX PRIOR TO PLACING YOUR ORDER, YOU AGREE THAT YOU HAVE READ THE COMPANY'S AGREEMENT IN ITS ENTIRETY AND AGREE TO BE BOUND COMPLETELY BY ITS TERMS AND CONDITIONS.

EXHIBIT 2
Better Business Bureau Complaints



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Roca Labs Nutraceutical USA

Phone: (850) 290-5200

Fax: (800) 500-0301

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Customer Complaints Summary

73 complaints closed with BBB in last 3 years | 39 closed in last 12 months

Complaint Type	Total Closed Complaints
Advertising / Sales Issues	5
Billing / Collection Issues	19
Delivery Issues	4
Guarantee / Warranty Issues	1
Problems with Product / Service	44
Total Closed Complaints	73

Additional Complaint Information

It has come to BBB's attention that the company will demand the removal of any complaint, web post or other publication that constitutes a breach of the terms and conditions agreed to by the consumer at the time of purchase, regardless of whether or not the consumer complaint is resolved.

Complaint Breakdown by Resolution

About Complaint Details

Complaint Resolution Log (73)

Complaint resolved with BBB assistance (36 complaints)

07/28/2014	<p>Problems with Product / Service Read Complaint Details</p> <hr/> <p>Additional Notes</p> <p>Complaint Category: None of the Above - Product Quality Complaint Issue</p> <p>Complaint: The product is almost impossible to consume, and when I managed to get part of it down it made no difference in my hunger feeling. I ordered this product in April of this year. The advertisement said they would check with my insurance company to see if I was</p>
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eligible for help with the cost. I thought that if they went through my insurance company ***** they were a legitimate company. They said my insurance company approved it and I ordered it. When it arrived, it was SILICONE! I have talked to a nurse and she said that could not be good for you. You had to "eat the drink, not drink it and then you had to consume two not one. The one time I was able to get one glass down, it did not make me feel any different. Not full, not not hungry or anything. I tried sending the product back and paid \$15.62 to return it, (after calling and not being able to talk to a real person) then they would not accept it, and it was sent back to me at a cost of another \$15.62. I think they misrepresented their product by claiming to contact the insurance company, and they didn't tell what the product was. If their product was any good they would give some kind refund if their customer was not satisfied. This product cost almost \$500 and that is a lot of money for nothing.

Initial Business Response

Roca Labs views the BBB as an unfair profitable organization based on <http://rocalabs.com/bbb/> which is using unfair grading system.

Ms.***** placed an order on 3/10/2014 8:50 PM. There is NO Silicone in the procedure.You will find a list of all natural ingredients here: <http://rocalabs.com/answers/ask-the-doctor/medical-answers/natural-ingredients/>. Instructions can be found here: <http://rocalabs.com/support/instructions/general/> which state to EAT as much as you can. It also states you may want to take a smaller dose later in the day as a reinforcement dose. Roca Labs site is packed with information. Customer only needed to read. Her claim stating the company didn't tell her what is was is false. She only needed to read. The website lists everything. It also states that all US and Canadian customers are entitled to a 25% health insurance discount.The return / refund policy is explained in detail as well. NOT once did the customer contact our help desk for support.We suggest she contact our support / helpdesk in writing as stated at:

*****@RocaLabs.com. or <http://rocalabs.com/support/>. It appears customer is not using the formula correctly. Roca Labs will always create a gastric bypass effect in the stomach when used properly. Customer needs to contact Roca Labs support.

Complaint Resolution: Company addressed the complaint issues. The consumer failed to acknowledge acceptance to BBB.

07/22/2014	Guarantee / Warranty Issues Read Complaint Details
07/07/2014	Billing / Collection Issues Read Complaint Details
07/07/2014	Billing / Collection Issues Read Complaint Details
06/23/2014	Billing / Collection Issues Read Complaint Details

The business failed to resolve the complaint issues (2 complaints)

05/30/2014	Problems with Product / Service Read Complaint Details
04/09/2014	Billing / Collection Issues Read Complaint Details

BBB found business made good faith effort to resolve complaint but customer not satisfied with business response (21 complaints)

08/21/2014	Problems with Product / Service Read Complaint Details
------------	--

06/17/2014	Billing / Collection Issues Read Complaint Details
06/12/2014	Problems with Product / Service Read Complaint Details
06/10/2014	Billing / Collection Issues Read Complaint Details
04/01/2014	Problems with Product / Service Read Complaint Details
Page 1 of 5	

BBB did not receive a response from business (14 complaints)	
05/16/2014	Problems with Product / Service Read Complaint Details
04/28/2014	Delivery Issues Read Complaint Details
04/28/2014	Problems with Product / Service Read Complaint Details
04/28/2014	Billing / Collection Issues Read Complaint Details
04/28/2014	Problems with Product / Service Read Complaint Details
Page 1 of 3	

As a matter of policy, BBB does not endorse any product, service or business.

BBB Business Reviews are provided solely to assist you in exercising your own best judgment. Information in this BBB Business Review is believed reliable but not guaranteed as to accuracy.

BBB Business Reviews generally cover a three-year reporting period. BBB Business Reviews are subject to change at any time.



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Complaint Breakdown by Resolution

About Complaint Details

Complaint Resolution Log (73)	
Complaint resolved with BBB assistance (36 complaints)	
07/28/2014	Problems with Product / Service Read Complaint Details
07/22/2014	Guarantee / Warranty Issues Read Complaint Details
<p>Additional Notes</p> <p>Complaint Category: Failure to honor money-back guarantees</p> <p>Complaint: Brought the product when I recieved the product spoke with my doctor and she advise me that she had not heard</p>	

of such product. Contacted the company
Contacted this company about a return and was told they didnt take returns and as I was reading someone elses complaint they company clearly stated that unopened packages could be returned but I was told that I could not return for a refund so I tried the product and it doesnt work at all its hard to swallow and made me very gasy was unable to use the product I see lots of complaints and recants if the sh*t dont work a refund should be offered this was clearly a scam cause they knew the product didnt work that legal threats are made bags of sand has never helped anyone loose weight and falling for tjis scam has cost me \$500 wheres my legal recourse.

Initial Business Response

***** placed an order over a year ago on March 6, 2013. She contacted the collections department on May 23, 2013 in which she was instructed to contact customer support. The only contact in support found was an inquiry making sure only one form was submitted by her, dated March 5, 2013. No further communication has been received. She was informed of the return policy along with the terms and conditions of the sale prior to purchasing and agreed. No orders will go through without agreeing to the terms. Because she claims the formula did not work for her does not mean that it does NOT work. Roca Labs has tens of thousands of successful users and over 100k success results when searching YouTube. This customer has no legitimate claim and should be dismissed. Roca Labs support is always available to those who need help achieving their weight loss. We advise this customer to seek the aid of Roca Labs qualified team in her use of the formula.

Complaint Resolution: Company addressed the complaint issues. The consumer failed to acknowledge acceptance to BBB.

07/07/2014

Billing / Collection Issues | Read Complaint Details

Additional Notes

Complaint Category: Improper collection practices

Complaint: I ordered product by due to health reasons can not use product. After sending an email and doctors note stating this RocaLab is wanting full payment.

On May 6, 2014, Roca Labs withdrew \$17.00 to approve my application for their product and then on the same day I was approved and they withdrew \$259.00 from my checking account. I received my tracking number on May 5, 2014 and my Roca Labs product in the mail on May 7, 2014. Before hand I went to their website and got all the information on how to use their product, I was so excited. I started my Roca Labs experience the following morning using the weakest amount. In the days that followed I had started to feel nauseated and constipation but new that this was something new to my body and that I would have to adjust to it. As I started to up my dose in the up coming days I started to notice tenderness and a lump sticking out around my belly button. As my symptoms got worse I made an appointment to see my family doctor. I was having severe pain, and my nausea went to feeling like I had to vomit, and my belly lump had gotten bigger.

When my doctor did her examination of me she found that I had a hernia. I brought along information about Roca Labs and she also went online at the time of my appointment to check it out because she did not know your product. She told me to get off your product right away because of the harm it could do to my condition. She made an appointment and I have since gone to have an ultrasound done to check how bad my hernia is. On May 27, 2014 and I tried to call Roca Lab in Florida and all I received back was an email stating that I could go onto the website to talk to someone. I went there and I saw how they do not guaranty any money back. That was fine; I paid for what I received so I wanted to cancelling the rest of my 2 payments. I had the Doctors medical information that they had requested. I also called my insurance company and they told me they had no documentation of Roca Lab contacting them. I also contacted my bank and they know that there will be no further charges coming out of my account from Roca Lab. All of the above I had put on

the Roca Labs website which is the only way you can communicate with them. I also emailed them my doctor's note.

On June 2, 2014 I received this from Roca Lab;

Conversation started by Finance Dept.

Hi *****,

We are sorry to hear about your medical condition. The return policy was made clear to you several times before you ordered: <http://www.RocaLabs.com/return>. Once the Formula was prepared for you and shipped, we can not reuse it. There are no refills or additional costs aside from the initial purchase which included everything. We will refund \$150 after your account has been paid in full. You have two remaining payments of \$259, due 6/9 and 7/9, respectively.

You should note that unpaid balances are forwarded to the legal department and added fees are charged which can end up in Florida court with charges totaling up to \$3,200. We trust and love our customers and hope they will never abuse the credit we extend them so they can afford the procedure. Please read again the Terms of the purchase.

If you have any questions, please contact us.

Thank you,

Support 05Jacqueline

I only received 1 shipment for \$259 and they are saying I will not receive any refills. Not that I can use the product but if what they are telling me is that what they sent me in my box is going to cost me \$777 they are not going by what their website says. I have read other peoples complaints also on here and several have said they tried to cancel and Roca Lab had shipped them another box out before time and Roca Lab charged them. I also called my health insurance company and ask them if anyone from Roca Lab called them to approve me to take their product or if it would be covered under my insurance. No one from Roca Lab had called them. This is an untruth that Roca Lab claims on their website and they charge you \$17 to have you approve.

Initial Business Response

Roca Labs views the BBB as an unfair profitable organization based on <http://rocalabs.com/bbb/> which is using unfair grading system.

Customer, ***** placed an order for the Roca Labs Procedure on 5/3/14. Customer chose the Premium kit with the health insurance discount applied.***** elected to pay her order total in 3 monthly installments of \$260 instead of in full for \$720.00. You can see all kits and pricing with the health insurance discount applied here: <http://rocalabs.com/gastric-bypass-surgery-cost/>

Customer's package shipped in FULL and there are NO more shipments due to her. Customer is mistaken when she states more shipments. She is responsible for 2 more payments and not shipments as it was shipped in full with her first payment. This is not a subscription but a line of credit was extended to her. Customer is mistaken. A partial refund was offered to the customer once her account is paid in full.

Complaint Resolution: Company addressed the complaint issues. The consumer failed to acknowledge acceptance to BBB.

07/07/2014	Billing / Collection Issues Read Complaint Details
06/23/2014	Billing / Collection Issues Read Complaint Details

The business failed to resolve the complaint issues (2 complaints)

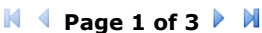
<p>05/30/2014</p>	<p>Problems with Product / Service Read Complaint Details</p> <hr/> <p>Additional Notes</p> <p>Complaint Category: None of the Above - Product Quality Complaint Issue</p> <p>Complaint: This product left me physically sick after following all directions to the letter and the company does not respond to me I purchased this product to help me with my weight loss issue. After following the directions to a "T", I became physically sick. My personal physician told me to discontinue the product immediately as my body wasn't tolerating it. The company only sends me generic responses when I try to contact them, claiming it MUST be my fault or I am DOING SOMETHING wrong!!! This product is clearly a scam, filling your belly with some inert type of filler to make you feel full. Is it even safe to ingest this stuff? It made me sick and who knows how many other people. Maybe the FDA should look into them as well. The company's entire website is a sales pitch, designed to prey on overweight people desperate for help. And they threaten collection activity and legal action from the minute they ship you this junk.</p> <p>Final Consumer Response Since this complaint, the company has sent me 2 threatening emails. The first told me if I paid them the balance of their charges, they would CONSIDER refunding SOME of the money. The second was to remove the complaint or they will sue me. They must be worried others will find out about their products instead of purchasing them. They have made no attempt to resolve this issue.</p> <p>Complaint Resolution: Company failed to resolve the complaint issues through BBB voluntary and self-regulatory process.</p> <hr/>
<p>04/09/2014</p>	<p>Billing / Collection Issues Read Complaint Details</p>

BBB found business made good faith effort to resolve complaint but customer not satisfied with business response (21 complaints)

<p>08/21/2014</p>	<p>Problems with Product / Service Read Complaint Details</p>
<p>06/17/2014</p>	<p>Billing / Collection Issues Read Complaint Details</p>
<p>06/12/2014</p>	<p>Problems with Product / Service Read Complaint Details</p>
<p>06/10/2014</p>	<p>Billing / Collection Issues Read Complaint Details</p>
<p>04/01/2014</p>	<p>Problems with Product / Service Read Complaint Details</p>

BBB did not receive a response from business (14 complaints)

<p>05/16/2014</p>	<p>Problems with Product / Service Read Complaint Details</p>
<p>04/28/2014</p>	<p>Delivery Issues Read Complaint Details</p>

04/28/2014	Problems with Product / Service Read Complaint Details
04/28/2014	Billing / Collection Issues Read Complaint Details
04/28/2014	Problems with Product / Service Read Complaint Details
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BBB BUSINESS REVIEW

Is this your Business?

CONSUMER COMPLAINTS

THIS BUSINESS IS NOT BBB ACCREDITED

Roca Labs Nutraceutical USA

Phone: (850) 290-5200

Fax: (800) 500-0301

BBB Business Reviews may not be reproduced for sales or promotional purposes.

Customer Complaints Summary

73 complaints closed with BBB in last 3 years 39 closed in last 12 months	
Complaint Type	Total Closed Complaints
Advertising / Sales Issues	5
Billing / Collection Issues	19
Delivery Issues	4
Guarantee / Warranty Issues	1
Problems with Product / Service	44
Total Closed Complaints	73

Additional Complaint Information

It has come to BBB's attention that the company will demand the removal of any complaint, web post or other publication that constitutes a breach of the terms and conditions agreed to by the consumer at the time of purchase, regardless of whether or not the consumer complaint is resolved.

Complaint Breakdown by Resolution

About Complaint Details

Complaint Resolution Log (73)	
Complaint resolved with BBB assistance (36 complaints)	
07/28/2014	Problems with Product / Service Read Complaint Details
07/22/2014	Guarantee / Warranty Issues Read Complaint Details
<p>Additional Notes</p> <p>Complaint Category: Failure to honor money-back guarantees</p> <p>Complaint: Brought the product when I recieved the product spoke with my doctor and she advise me that she had not</p>	

heard of such product. Contacted the company
 Contacted this company about a return and was told they didnt
 take returns and as I was reading someone elses complaint
 they company clearly stated that unopened packages could be
 returned but I was told that I could not return for a refund so I
 tried the product and it doesnt work at all its hard to swallow
 and made me very gasy was unable to use the product I see
 lots of complaints and recants if the sh*t dont work a refund
 should be offered this was clearly a scam cause they knew the
 product didnt work that legal threats are made bags of sand
 has never helped anyone loose weight and falling for tjis scam
 has cost me \$500 wheres my legal recourse.

Initial Business Response

***** placed an order over a year ago on March 6,
 2013. She contacted the collections department on May 23,
 2013 in which she was instructed to contact customer support.
 The only contact in support found was an inquiry making sure
 only one form was submitted by her, dated March 5, 2013. No
 further communication has been received. She was informed of
 the return policy along with the terms and conditions of the sale
 prior to purchasing and agreed. No orders will go through
 without agreeing to the terms. Because she claims the formula
 did not work for her does not mean that it does NOT work. Roca
 Labs has tens of thousands of successful users and over 100k
 success results when searching YouTube. This customer has no
 legitimate claim and should be dismissed. Roca Labs support is
 always available to those who need help achieving their weight
 loss. We advise this customer to seek the aid of Roca Labs
 qualified team in her use of the formula.

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Complaint Resolution: Company addressed the complaint issues. The consumer failed to acknowledge acceptance to BBB.

07/07/2014

Billing / Collection Issues | Read Complaint Details

Additional Notes

Complaint Category: Improper collection practices

Complaint: I ordered product by due to health reasons can not use product. After sending an email and doctors note stating this RocaLab is wanting full payment.

On May 6, 2014, Roca Labs withdrew \$17.00 to approve my application for their product and then on the same day I was approved and they withdrew \$259.00 from my checking account. I received my tracking number on May 5, 2014 and my Roca Labs product in the mail on May 7, 2014. Before hand I went to their website and got all the information on how to use their product, I was so excited. I started my Roca Labs experience the following morning using the weakest amount. In the days that followed I had started to feel nauseated and constipation but new that this was something new to my body and that I would have to adjust to it. As I started to up my dose in the up coming days I started to notice tenderness and a lump sticking out around my belly button. As my symptoms got worse I made an appointment to see my family doctor. I was having severe pain, and my nausea went to feeling like I had to vomit, and my belly lump had gotten bigger.

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Support 05Jacqueline

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Customer's package shipped in FULL and there are NO more shipments due to her. Customer is mistaken when she states more shipments. She is responsible for 2 more payments and not shipments as it was shipped in full with her first payment. This is not a subscription but a line of credit was extended to her. Customer is mistaken. A partial refund was offered to the customer once her account is paid in full.

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Page 1 of 5

BBB did not receive a response from business (14 complaints)

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EXHIBIT 3
Declaration of Jennifer Schaive

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROCA LABS, INC.,

Case No: 8:14-cv-2096-T-33EAJ

Plaintiff,

v.

CONSUMER OPINION CORP. and
OPINION CORP.,

Defendants.

_____ /

**DECLARATION OF JENNIFER SCHAIVE IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF A TEMPORARY
INJUNCTION**

I, Jennifer Schaive, having personal knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, state as follows:

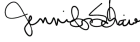
1. I am over 18 and a resident of Springfield, Illinois.
2. In August 2013, I purchased a product sold by Plaintiff Roca Labs, Inc. ("Roca") for \$600, described by Roca as a "nutraceutical" that would be effective in helping me lose weight.
3. Upon receiving Roca's product, I tried to use it in accordance with Roca's directions for approximately one week.
4. I stopped attempting to use Roca's product after approximately one week because I found it to be impossible to swallow.
5. My boyfriend is a bodybuilder and nutrition expert, and he advised me that all Roca Labs' product is, is the equivalent of sand.

6. After attempting to use Roca's product for approximately one week, I contacted Roca's customer support service and requested a refund.
7. Roca informed me that I would not receive a refund for the product.
8. Prior to purchasing it, I could only find positive reviews of the product online.
9. I also performed research on Roca Labs' product online after purchasing it.
10. On May 19, 2014, I contacted the Better Business Bureau ("BBB") and submitted a complaint concerning Roca's product. Attached as Exhibit A to this declaration is a true and correct copy of this complaint.
11. On May 21, 2014, after writing my BBB complaint, I was contacted by Roca Labs regarding my complaint. Roca Labs alleged that my complaint violated the terms and conditions of my purchase of their product, and threatened me with litigation if I did not withdraw the complaint by May 30, 2014.
12. This letter was signed by Sharon King, who was represented in the letter as a paralegal of Roca Labs. Attached as Exhibit A to this declaration is a true and correct copy of Roca Labs' demand letter to me.
13. After receiving Roca Labs' demand letter, I sent an email to Roca Labs' legal department notifying them that I would withdraw my BBB complaint once I received a refund. I was not issued a refund. Attached as Exhibit B to this declaration is a true and correct copy of this email exchange.
14. I was notified via email on June 13 by the BBB that it would no longer be able to pursue my complaint with Roca Labs. Attached as Exhibit C to this declaration is a true and correct copy of this email.

15. On June 18, 2014, I was notified via email by the BBB that my complaint against Roca Labs had been closed. Attached as Exhibit D to this declaration is a true and correct copy of this email.
16. To this day, I have not received a refund from Roca Labs.
17. It is my understanding that Roca Labs has sent similar threats to everyone who has complained about them online.
18. Had I been able to review any negative reviews of the company, I might have made a more informed decision. But, my decision to spend money on their product was based on the fact that I had only found positive information about them. Therefore, I believe that I was not able to make a fully informed decision, because people like me, people who had bad experiences with Roca Labs' product, were not able to warn me.
19. I would like to warn anyone else I can that they should avoid the product and this company.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed this 18th day of September, 2014, in Springfield, Illinois.

DocuSigned by:

A564998AD63845B

Jennifer Schaive

EXHIBIT A

Roca Labs, Inc. Legal Dept.

PO Box 5309 · Sarasota, FL 34277
(813) 400-3968 Legal@RocaLabs.com

Jennifer Schaive
800 Wilson Ter
Springfield , IL 62

Via email to: williams.schaive@yahoo.com

May 21, 2014

RE: Roca Labs Order No.27505
BBB Complaint No. 67270782

Dear Ms.Schaive:

I represent Roca Labs, Inc. The complaint you filed with the Better Business Bureau (“BBB”) has been referred to me for handling. Your complaint is attached as Exhibit A.

Roca Labs strives to be completely transparent to its customers. Nothing is hidden; everything is explained on the website and in the terms and conditions. No customer has ever accused Roca Labs of violating the terms and conditions of purchase or any policy or law.

Roca Labs does everything it promises to its customers. Customers are permitted to cancel an order before an approval of the health application, after which the order is considered shipped and not returnable. Customers are given rebates for success and product discounts (*legal consideration*) **in return for their promise to report complaints only to Roca Labs.**

In other words, Roca Labs goes far above and beyond the norm to ensure that the terms and conditions are clear and that the customers see them. In fact, customers are practically forced to read them. That is intentional, of course, with the desired effect being to avoid consumer complaints. This policy works for the large majority of Roca Labs customers but occasionally a customer decides to breach their agreement instead.

Roca Labs cares about its customers and strives to address their issues within the parameters of the terms and conditions of purchase. Roca Labs performs as promised and they ask their customers do the same. So, it is imperative that you immediately dismiss your BBB complaint.

In your complaint you state the following:

"I tried the product for a specific period of time however, I did not lose the weight as was described on their website. I later learned the main ingredient in their product is sand."

The main ingredient is NOT sand. Sand is NOT an ingredient at all in the Roca Labs procedure.

Your complaint violates the terms and conditions of your purchase and constitutes a breach of contract and possibly defamation. If you fail or refuse to withdraw the complaint and remove the post by close of business on May , 2014, Roca Labs will have no choice but to refer this matter to our litigation counsel for immediate filing and you may be held liable for damages plus attorney fees and all costs of collection.

Exclusive jurisdiction for all claims arising out of a purchase of Roca Labs products is in the State of Florida.

This notice is final; there will be no further notice. Please mitigate your damages and possibly avoid legal action by IMMEDIATELY DISMISSING YOUR COMPLAINT by Friday, May 30, 2014.

Sincerely,
Sharon King
Paralegal
Roca Labs Inc.

cc: Whitney Coyne, Esq

Exhibit "A"

BBB CASE#: 67279782

Consumer Info	
Complaint filed by:	NAME: Jennifer Schaive DAY PHONE: - ADDRESS: 8000 Wilson Ter 62712-8952 Springfield, IL EVE PHONE: - CELL PHONE: - EMAIL: williams.schaive@yahoo.com FAX: - (Less)
Complaint filed against:	Roca Labs USA (More)
Complaint status:	Receive Business Response (More)
Case Description:	This product did not work as described. I would like a refund. I ordered the product from this company based on the review by Dr. Oz and the company website. I paid via my debit card in August. I tried the product for a specific period of time however, I did not lose the weight as was described on their website. I later learned the main ingredient in their product is sand. The product was to be eaten twice a day. It was equivalent to eating silly putty. The product was difficult to eat, it was not a liquid and would seize up as soon as water was added. (Less)
Category:	Product Issues
Case opened date:	05/19/2014
Case closed date:	
Desired Resolution:	I contacted the business via email asking for a refund. The email I received stated that "your success is our reward" and recommended continuing on the product. I would like \$600, which was my purchase price. (Less)

EXHIBIT B

From:"Legal Dep." <legal@rocalabs.com>
Date:Wed, May 21, 2014 at 10:58 AM
Subject:Re: Urgent Legal Matter, Immediate Attention Required

Dear Ms. Schaive,

Please refer to the company's return policy [here](#) and the terms and conditions in which you agreed upon when placing your order.

Sincerely,

Sharon K
Roca Labs Inc.
Legal Dept.

On Wed, May 21, 2014 at 11:31 AM, Jennifer Schaive <williams.schaive@yahoo.com> wrote:

I sent an email to Roca Labs directly asking for my money back. I was told I would not receive a refund. All I want is a refund. The product did not work as advertised. As soon as I receive a refund, I will cancel my complaint.

Is it against company policy to issue a refund to unsatisfied customers?

On Wednesday, May 21, 2014 10:19 AM, Legal Dep. <legal@rocalabs.com> wrote:

Attached please find an urgent legal correspondence that requires your immediate attention.

Legal Dept.
Roca Labs Inc.

EXHIBIT C

From: "Better Business Bureau" <clearwater.tay@bureaudata.com>
Date: Fri, Jun 13, 2014 at 7:06 AM
Subject: BBB Complaint Case# 67279782 (Ref#1-90092885-67279782-16-8000)

Complaint ID#: 67279782
Business Name: Roca Labs USA

As you are aware, BBB has been pursuing the mediation of your complaint. You have indicated that you are not satisfied with the business's response to your issues, and the dispute appears to be at an impasse.

Our goal is to successfully bring businesses and customers together to resolve their disputes. We rely on the voluntary self-regulatory power of businesses to achieve this. In many cases, a satisfactory resolution is achieved.

Unfortunately, we have been unable to resolve the dispute to your satisfaction, and BBB can no longer pursue the matter.

Your complaint has been closed and will be reported to the public reflective of your dissatisfaction with the business. A business's complaint record influences the BBB Business Review given to people looking for information about the business.

Thank you for giving your BBB the opportunity to serve you.

Sincerely,

Tawnia Yovanovich
Trade Practice Specialist ext. 3319

EXHIBIT D

From:"Jennifer Schaive" <williams.schaive@yahoo.com>
Date:Wed, Jun 18, 2014 at 12:41 PM
Subject:Re: Roca Labs Complaint

I assume this means I will not receive a refund.

On Wednesday, June 18, 2014 9:43 AM, Tawnia Yovanovich <tyovanovich@bbbwestflorida.org> wrote:

Thank you for your e-mail. At this time it appears that the business did not respond to the attached information that was sent to them. At this time your complaint has been closed as the consumer is dissatisfied and the BBB will handle an internal review of the attachments as needed. If you have any questions or would like to discuss your complaint in detail, we may be reached at the number listed below.

Tawnia Yovanovich | *Trade Practice Specialist*

Tel: 727-535-5609 ext 3319

Fax: 727-539-6301

Email: tyovanovich@bbbwestflorida.org

www.bbb.org | *Start With Trust*

Better Business Bureau of West Florida, Inc.
2655 McCormick Dr
Clearwater, FL 33759

EXHIBIT 4
Declaration of Michael Podolsky

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROCA LABS, INC.,

Case No: 8:14-cv-2096-T-33EAJ

Plaintiff,

v.

CONSUMER OPINION CORP. and
OPINION CORP.,

Defendants.

**DECLARATION OF MICHAEL PODOLSKY IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF A TEMPORARY
INJUNCTION**

I, Michael Podolsky, declare under penalty of perjury, as follows:

1. I am over the age of eighteen (18) years and have never been convicted of a felony or crime involving fraud or dishonesty. I have first-hand knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I am a representative of Opinion Corp., d/b/a Pissed Consumer, the defendant in this action.

3. It is our policy, pursuant to Opinion Corp.'s terms of service, that we will not take down a review absent a court order or a notarized declaration from the author of the review.

4. A business does not need to pay to take down a review. In fact, we have been offered significant sums of money in the past to remove reviews, which we have always declined. Removal is never for sale.

5. The business may respond to the review in the comments section beneath the post for free. Opinion Corp. does not remove these posts from its website, unless those posts do not comply with the terms of service. There is absolutely no charge for the business to post a comment.

6. To my knowledge, Roca Labs has not posted a comment to any of the reviews about the company on PissedConsumer.com.

7. Opinion Corp. offers monthly subscription monitoring for businesses that wish to be notified of reviews regarding the company. The services will automatically alert the business if a review is posted and will allow the business to draft an official response, which is verified to ensure that the statement comes directly from the company. The company's official responses remain posted even if the company later cancels the service.

8. Thousands of businesses are reviewed on PissedConsumer.com, including Roca Labs.

9. Opinion Corp. does not author any of the reviews featured on PissedConsumer.com.

10. Opinion Corp. makes no opinion regarding the merits of any particular company or product reviewed on PissedConsumer.com.

11. Opinion Corp. also posts links to the reviews featured on PissedConsumer.com on Twitter. Opinion Corp. does not author the content of the Tweets. The Tweets are automatically generated from reviews posted on PissedConsumer.com

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18 day of September, 2014

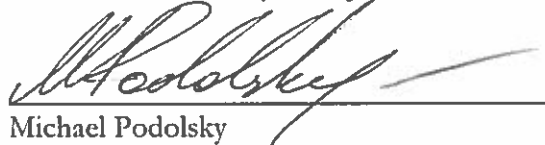

Michael Podolsky

EXHIBIT 5
Declaration of Margaret Walsh

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROCA LABS, INC.,

Case No: 8:14-cv-2096-T-33EAJ

Plaintiff,

v.

CONSUMER OPINION CORP. and
OPINION CORP.,

Defendants.

_____ /

**DECLARATION OF MARGARET WALSH IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PLAINTIFF’S MOTION FOR ENTRY OF A TEMPORARY
INJUNCTION**

I, Margaret Walsh, having personal knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, state as follows:

1. I am over 18, and a resident of Milwaukee, Wisconsin.
2. Around February 2011, I purchased a product sold by Plaintiff Roca Labs, Inc. (“Roca”) online, described by Roca as a “nutraceutical” that would be effective in helping me lose weight.
3. I paid approximately \$400 for the product.
4. While purchasing Roca’s product, I was not aware of the availability of a discount on the product if I agreed to the entirety of Roca’s Terms and Conditions of Use, including conditions that prohibited me from publishing negative statements about Roca or its products or prohibiting me from returning the product if it did not work. I simply purchased the only product available on the website.

5. Upon receiving Roca's product, the box was damaged, poorly packaged, and did not provide any additional information about the product.
6. I used the Roca product for a few weeks. However it tasted horrible.
7. Also, the entire time I used Roca's product, I had severe stomach cramps and diarrhea.
8. After using Roca's product and having such terrible stomach pain and discomfort, I contacted Roca's customer support service and attempted to return the product.
9. I spent weeks making numerous calls to Roca's customer service. No one was helpful, and I was told that I was not allowed to return the product because I opened the package.
10. I would not have purchased the Roca product if I knew that I would not be able to return the product after spending \$400 on it, if I was dissatisfied with how the product worked, and if it caused health problems for me.
11. On or around March 9, 2011, I contacted the Better Business Bureau ("BBB") and submitted a complaint concerning Roca's product and non-responsive customer service. Attached as Exhibit A to this declaration is a copy of the complaint I filed with the BBB.
12. I also wrote a letter to George C. Whiting, whom I believed to own Roca Labs, to complain about the product and about customer service. Attached as Exhibit B to this declaration is my letter to George C. Whiting.
13. On April 29, 2011, I received notice via email from the Better Business Bureau that Roca Labs had responded to my BBB complaint and that my complaint

would be closed if I did not advise them of my position by May 9. Attached as Exhibit C to this declaration is the email from the BBB.

14. On May 13, my BBB complaint was closed. *See* Exhibit A. I have still received no resolution.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed this 18th day of September, 2014, in Milwaukee, WI.

DocuSigned by:
Margaret Walsh
D21ADC914675493...

Margaret Walsh

EXHIBIT A

BBB CASE#: 67194137

Complaint filed by:	Margaret Walsh (More)
Complaint filed against:	Roca Labs, Inc. (More)
Complaint status:	Case ADMINISTRATIVELY CLOSED (More)
Case Description:	<p>Roca Labs, Inc. Mini Gastric Bypass No Surgery, mentions product works 90% of the time. Received product on 2/4/11, no instructions were in the box. went on line to read the instructions and terms of agreement. I was billed \$400.00 and none of their advertised claims were true. Followed directions explicitly, did not lose a pound. They state you will lose about 15 lbs in a month. No hunger, stomach capacity will shrink down to 20% etc. None of their claims were true. The return agreement goes on and on stating since 90% is successful, if a refund occurs, only unopened items and 15% restock fee and \$25.00 shipping charges. Right after I take the product, followed by 3 cups of water, it immediately gets expelled through bowel movement.</p> <p>The product has no effect on me. Therefore I am requesting total refund of \$400.00, They sent me 5 packages, 3 are still unopened. Nonetheless, because of false advertising and misleading the public for such an outrageous amount, I must insist on full refund of \$400.00 and I will return all of the products. Thank you for your help in this matter.</p> <p>(Less)</p>
Category:	Refund or Exchange Issues
Case opened date:	03/09/2011
Case closed date:	05/13/2011
Desired Resolution:	<p>I must insist on full refund of \$400.00 After following directions lost not one pound. All their claims were false and misleading. They mention 90% success rate. Their terms and agreement states, if a refund should occur, only unopened packages will be credited and a 15% restocking charge and \$25.00 shipping charges will be added. They sent 5 packages, 3 are unopened. I want my refund of \$400.00 back as the product did nothing except make me expel it immediately upon taking it. Again, I have not lost a single pound and cannot take this product.</p> <p>I want to send them back all of the 5 packages for my \$400.00 (Less)</p>

[Download a copy of this complaint so you can print it for your records](#)

*** This complaint has been closed. If you have more information to provide to the bureau regarding this complaint, please click [here](#).

In an effort to improve our customer service, please take a moment to complete a BBB survey by using the following link: www.westflorida.bbb.org/survey ***

All attachments for this complaint.

NOTE: You may need [Adobe Reader](#) and/or [WinZip](#) to view these files:

Please click on the link(s) below to view attachments or response:

[Receive Business Response \(04/19/2011\)](#) 



EXHIBIT B

From: margaret walsh <next2art@yahoo.com>
Date: March 20, 2011 at 10:11:44 PM CDT
To: Nina Brewerton <nbrewerton@bbbwestflorida.org>
Cc: Margret Walsh <next2art@yahoo.com>
Subject: Case # 67194137 ID 90092885 Roca Labs, Inc.

Dear Nina,

I want to thank you for your kind effort and cooperation on my behalf in this matter. I gave the product another try like you suggested and again it failed dismally. So this is a copy of the letter I am sending to the officer of Roca Labs, Inc. George C. Whiting.

George C. Whiting
Roca Labs, Inc.
4001 W. Henry Ave. Ste. 306
Tampa, FL 33614

Dear Mr. Whiting,

Thank you for reading this letter and giving it your full attention. According to your terms and agreement no refund is given if package has been opened. That statement appears illogical as how would anyone know if the product worked or not without opening the package and trying it. Also mentioned no refund if opened was posted on the outside of the package. There was no such posting on the outside of the package. Furthermore, whoever sent out the package did not include any instructions as to how to take the product and the package arrived in very damaged condition. The tape was partially sealed and the package was torn, almost opened at the bottom. This indicates poor merchandise handling and poor shipping control. I called to inform about the condition of the package as well as no instructions were given in the package, An apology was given for the package and I was told to get my instructions on-line. On numerous occasions to Customer Care Dept. I mentioned after following the guidelines and instructions on line to a tee, the results failed dismally. It did nothing the advertisement claimed., that one would eat half, and cravings would be lowered and stomach would reduce to 20% capacity, thereby reaching significant weight loss. 90% success rate is claimed and the rest blamed on emotional or psychological cause of some sort. I have no emotional or psychological issues. The product did not work and I did not lose any weight, not even a pound. No products work for everyone, that is why diet products are backed by 100% satisfaction guaranteed, money back. Your courtesy refund of \$120.00 is not acceptable. I hereby request reimbursement in full of all money paid to you. Due to the lack of success of your product, it is ethically imperative you honour my request.

A copy of this letter is sent to Ms. Nina Brewerton at BBB.

Very truly yours,
Margaret Walsh

A copy of this letter is sent to Ms. Nina Brewerton at BBB.

On



EXHIBIT C

From: "Better Business Bureau" <clearwater.tay@bureaudata.com>
Date: April 29, 2011 at 7:06:03 AM CDT
To: "Mrs Margaret Walsh" <next2art@yahoo.com>
Subject: **BBB Complaint Case#67194137(Ref#1-90092885-67194137-17-4100)**
Reply-To: "Better Business Bureau" <clearwater.tay@bureaudata.com>

Complaint ID#: 67194137
Business Name: Roca Labs Inc

The Better Business Bureau has received an additional response from the company regarding your complaint. The company's response to your complaint can be viewed at the following website address. You will be able to enter your response directly on our website:

<http://westflorida.app.bbb.org/complaint/view/67194137/c/9yuy9p>

Please review the company's response to your complaint and advise us of your position in the matter by **May 9, 2011**. If the Bureau does not receive a response, your complaint will close as Assumed Satisfied.

Sincerely,

Tawnia Yovanovich
Trade Practice Specialist ext. 3319

EXHIBIT 6
Declaration of Tameka Anderson

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROCA LABS, INC.,

Case No: 8:14-cv-2096-T-33EAJ

Plaintiff,

v.

CONSUMER OPINION CORP. and
OPINION CORP.,

Defendants.

_____ /

**DECLARATION OF TAMEKA ANDERSON IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PLAINTIFF’S MOTION FOR ENTRY OF A TEMPORARY
INJUNCTION**

I, Tameka Anderson, having personal knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, state as follows:

1. I am a resident of Memphis, Tennessee.
2. Approximately in 2011, I purchased a product sold by Plaintiff Roca Labs, Inc. (“Roca”) described by Roca as a “nutraceutical” that would be effective in helping me lose weight.
3. I received two tubs of Roca’s product, for which I paid approximately \$500.
4. Upon receiving Roca’s product, I attempted to use it in accordance with Roca’s directions for approximately two weeks.
5. The product was disgustingly thick and had the consistency of silicone. I was thus incapable of swallowing the product in accordance with Roca’s directions. I am not sure how any human could swallow it.

6. After attempting to use Roca's product for approximately two weeks, I contacted Roca's customer support service and attempted to return the product.
7. After my inquiry to Roca's customer support service, I was informed by Roca that they would provide no refunds, no matter what.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed this 16th day of September, 2014, in Memphis, Tennessee.

DocuSigned by:
Tameka Anderson
5642825005ED470...

Tameka Anderson