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20 SUPERIOR COURT OF CALIFORNIA
 21 SANTA CRUZ COUNTY

22 ERIC ROSS, THOMAS MABREY, JR. and
 23 DIANNA SPALLIERO, on behalf of themselves
 24 and all others similarly situated,

25 Plaintiffs,

26 v.

27 TREX COMPANY, INC., a Delaware
 28 corporation,

Defendant.

FILED
 SEP 30 2008

ALEX GALVO, CLERK
 BY DEBORAH ROJAS
 DEPUTY, SANTA CRUZ COUNTY

CASE NO.: 08-161553

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

FILED BY FAX

29 Plaintiffs Eric Ross, Thomas Mabrey, Jr. and Dianna Spalliero ("Plaintiffs") allege
 30 the following on behalf of themselves and all similarly situated:

31 **I. INTRODUCTION**

32 1. Plaintiffs bring this action for monetary damages, declaratory and equitable
 33 relief, and restitution and/or disgorgement of profits on behalf of themselves and all similarly-

1 situated individuals and entities (the "Class") who own decking products manufactured,
2 warranted, advertised, and sold by Trex Company, Inc. ("Trex").

3 2. Trex decking products are inherently defective because when installed and
4 maintained in accordance with Trex's instructions, they experience delamination and moisture-
5 related defects and are substantially certain to fail well before their warranted and expected useful
6 life ("Defects"). These Defects are latent and exist in the Trex decks at the time of sale regardless
7 of proper installation, maintenance and cleaning, and there is no repair that will correct the
8 problems.

9 3. Trex has been manufacturing, warranting, advertising and selling Trex
10 products it knew or should have known were inherently defective since approximately 1996, and
11 perhaps before.

12 4. As a result of these Defects, Plaintiffs and thousands of others in California
13 and across the United States own inherently defective Trex decks that are failing to perform as
14 warranted and advertised by Trex, did not get what they paid for, and have incurred or will incur
15 thousands of dollars in damages to replace their decks.

16 II. PARTIES

17 5. Plaintiff Eric Ross resides in Santa Cruz, Santa Cruz County, California.
18 He purchased Trex Accents decking material in or around June 2005, for approximately
19 \$2,926.84. Plaintiff Ross constructed a deck on his home from those materials, at an additional
20 cost of approximately \$2,000. In or about January 2007, Plaintiff Ross's deck began to show
21 signs of delamination. Plaintiffs' expert has inspected Plaintiff Ross's deck and confirmed that
22 the delamination defect has manifested.

23 6. Plaintiff Thomas Mabrey, Jr. is an Illinois resident who resides in
24 Inverness, Cook County, Illinois. Plaintiff Mabrey purchased Trex Escape decking material in
25 March 2005 at a cost of approximately \$13,600 for materials and labor. Within just a few months
26 after installation, the deck started to manifest the Defects. Plaintiff Mabrey's contractor
27 attempted to contact Trex on numerous occasions on his behalf to discuss his problem but the
28 company did not respond to his telephone messages and emails.

1 7. Plaintiff Dianna Spalliero is resident of Chicago, Cook County, Illinois.
2 Plaintiff Spalliero purchased Trex decking material in approximately June 2007 through a
3 contractor. The total cost of the decking materials and labor to install the deck was approximately
4 \$12,000. Roughly one year after the deck was installed, it started to manifest the Defects.
5 Plaintiff Spalliero spoke to her contractor about the problem, and he contacted Trex. Trex told
6 Plaintiff Spalliero's contractor that the Defects were not covered under her warranty and it could
7 not provide her with any relief.

8 8. Trex is incorporated in Delaware and has its principal place of business in
9 Winchester, Virginia. It is the country's largest manufacturer of wood-plastic composite decking,
10 railing, fencing and trim products. Its products are marketed and sold under the brand name
11 "Trex." The company does business throughout California and the United States. It
12 manufactured, warranted, advertised and sold the defective decking products that were installed
13 on Plaintiffs' homes and those of thousands of others throughout California and the United States.

14 III. JURISDICTION

15 9. This Court has jurisdiction over this action pursuant to California Code of
16 Civil Procedure Section 410.10. Jurisdiction over Trex is proper because it has purposefully
17 availed itself of the privilege of conducting business activities in California by selling Trex
18 decking materials to Plaintiff Ross and members of the Class, by maintaining a distribution center
19 in this State, and because it has generally maintained systematic and continuous business contacts
20 with this state.

21 IV. VENUE

22 10. Venue is proper in this Court pursuant to California Code of Civil
23 Procedure §§ 395(a), 395(b), 395.5, Civil Code § 1780(c), because (a) some of the described
24 injuries to property occurred in this county; (b) some of the acts and transactions complained of
25 herein occurred within this county; and (c) Trex conducts business in this county by warranting,
26 advertising and selling its decking products here.

27 11. A venue affidavit pursuant to California Civil Code § 1780(c) is attached
28 hereto as Exhibit A.

1 **V. CHOICE OF LAW**

2 12. California law governs the claims asserted herein.

3 13. No enforceable choice-of-law agreement governs here or compels the
4 application of different states' laws.

5 14. California's interest in this action, which seeks to protect the rights and
6 interests of California and other U.S. residents against a company doing business in California, is
7 greater than any other State.

8 15. A common nucleus of facts and legal issues dominates this litigation.
9 Although some class members may possess slightly differing remedies based on state statute or
10 common law, the claims asserted by the Plaintiffs are predicated on the same core facts and legal
11 claims with substantially the same relevant elements. To the extent distinct remedies may exist,
12 they are local variants of a generally homogenous collection of causes of action which include
13 consumer fraud, breach of express warranty and unjust enrichment.

14 16. California has the most significant relationship with the parties and to the
15 events and occurrences that form the basis of the litigation. Trex distributes its product in
16 California and maintains a distribution center in the State. Plaintiff Ross resides in Santa Cruz
17 County, California. He purchased Trex decking material in California, and the decking material
18 is currently located in California. Thousands of other California residents also purchased and
19 own Trex decks that have experienced or will experience the Defects.

20 17. Application of California law is neither arbitrary nor fundamentally unfair,
21 because California has significant contacts and a significant aggregation of contacts that create a
22 state interest in this litigation.

23 **VI. FACTUAL ALLEGATIONS**

24 18. Trex is a wood-plastic composite decking material that Trex manufactures
25 using a blend of plastics and recycled post-industrial wood fibers. Trex is advertised as a
26 premium material suitable for constructing outdoor decks, railings and other related structures.
27 Trex is typically more expensive than decking products made from alternate materials, such as
28 treated wood, redwood and cedar.

1 19. Upon information and belief, Trex has been manufacturing, advertising,
2 warranting and selling Trex for consumer and commercial use since at least 1996.

3 20. Trex advertises its decking as "tak[ing] the natural beauty of wood, but
4 leav[ing] behind all the rotting and splintering," and as "resistant to moisture."
5 <<http://www.trex.com/decking/default.aspx>>

6 21. Trex warrants its products for twenty-five (25) years from the date of
7 original purchase. The warranty provides that "Trex products shall be free from material defects
8 in workmanship and materials, and shall not check, split, splinter, rot or suffer structural damage
9 from termites or fungal decay." <<http://www.trex.com/warranty/>>

10 22. Trex decking products, however, experience the Defects shortly after
11 installation, and well before their warranted and expected useful life. The Defects are unsolvable,
12 in that there is no repair or cleaning that can correct the problems.

13 23. Plaintiffs and their counsel have been in contact with approximately three
14 hundred (300) owners of Trex decks throughout the United States who have experienced the
15 Defects.

16 24. Trex fails in its purpose of providing suitable material with which to build
17 and maintain a deck, and it fails to meet its advertised and warranted qualities of being low
18 maintenance, superior to wood, and fit for use without application of sealants.

19 25. Trex has refused to provide adequate relief to Plaintiffs or thousands of
20 others like them whose decks are prematurely failing.

21 **VII. TOLLING**

22 26. Because the Defects are latent and not detectable until manifestation,
23 Plaintiffs and the Class members were not reasonably able to discover them until after purchase
24 and installation, despite their exercise of due diligence.

25 27. Trex knew of the Defects prior to the time of sale, and concealed that
26 material information from Plaintiffs and all consumers. Any applicable statutes of limitation
27 have, therefore, been tolled by Trex's concealment of material facts.

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1 28. Trex is estopped from relying on any statutes of limitation because of its
2 concealment of the Defects.

3 **VIII. CLASS ACTION ALLEGATIONS**

4 29. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all
5 other similarly situated consumers as members of a proposed plaintiff class pursuant to California
6 Code of Civil Procedure § 382, California Civil Code § 1781, and, to the extent applicable, the
7 analogous provisions of Federal Rule of Civil Procedure 23. Based upon the allegations of this
8 Complaint, this action satisfies the ascertainability, numerosity, commonality, typicality,
9 adequacy, predominance, and superiority requirements for class certification in California Courts.

10 30. The Class is defined as:

11 All persons and entities, who own decking or structures constructed
12 of Trex deck material, including the legal representatives, heirs,
13 successors in interest, transferees and assigns of all such foregoing
14 holders and/or owners, immediate and remote (the "Class").

15 31. The following Persons shall be excluded from the Class: (1) Trex and its
16 subsidiaries, affiliates, officers and employees; (2) all Persons who make a timely election to be
17 excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom this
18 case is assigned and any immediate family members thereof.

19 32. In addition, all claims for personal injury, wrongful death and emotional
20 distress are excluded from the Class.

21 33. Plaintiffs reserve the right to re-define the Class prior to certification.

22 **Ascertainability & Numerosity**

23 34. Although the exact number of Class members is uncertain and can only be
24 ascertained through appropriate discovery, Plaintiffs are informed and reasonably believe the
25 number of affected structures constructed from Trex products is in the tens of thousands, such
26 that joinder is impracticable.

27 35. The Class is composed of an easily ascertainable, self-identifying set of
28 individuals and entities who own decks or other structures constructed with Trex material.

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Community of Interest

36. There is a well-defined community of interest among the proposed Class members, and the disposition of all their claims in a single action will provide substantial benefits to all parties and to the Court.

Typicality

37. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class members, own defective Trex decks, and have been damaged by Trex's uniform misconduct by having decks that are deteriorating or otherwise defective.

38. The representative Plaintiffs, like all Class members, have been damaged by Defendant's misconduct in that they have incurred or will incur the cost cleaning and/or replacing the defective Trex decking products, including the labor costs.

39. Furthermore, the factual bases of Trex's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class.

Predominance of Common Issues

40. There are numerous questions of law and fact common to Plaintiffs and the Class. Those questions predominate over any questions that may affect individual Class members, and include the following:

41. Whether Trex products are defective in that they experience delamination and moisture-related defects, and are therefore substantially certain to fail under ordinary conditions well in advance of their expected useful life;

42. Whether Trex knew or should have known of the inherent design and/or manufacturing defects in Trex products and concealed those facts;

43. Whether Trex misrepresented that its products had certain qualities, characteristics or benefits;

44. Whether Trex represented that its products were of a particular standard, quality or grade when they were not;

1 45. Whether Trex advertised and/or offered for sale products that were
2 defective without clearly and unequivocally indicating that the products were defective;

3 46. Whether the facts Trex misrepresented, concealed or failed to disclose were
4 material;

5 47. Whether as a result of Trex's misrepresentation and/or concealment of
6 material facts, Plaintiffs and the Class acted to their detriment by purchasing Trex products;

7 48. Whether Plaintiffs and the Class have suffered a loss as the result of Trex's
8 misrepresentation and/or concealment of material facts;

9 49. Whether Trex's conduct in advertising and selling Trex products
10 constitutes a violation of the California Consumer Legal Remedies Act, Civ. Code § 1750, *et seq.*
11 ("CLRA");

12 50. Whether Trex's conduct in advertising and selling Trex products
13 constitutes a violation of California's Unfair Business Practices Act, Bus. & Prof. Code § 17200,
14 *et seq.*;

15 51. Whether Trex created express warranties regarding its product;

16 52. Whether those warranties became part of the basis of the bargain for
17 Plaintiffs and the Class;

18 53. Whether Trex should be declared financially responsible for notifying all
19 Class members of the problems with Trex products and for the costs and expenses of repair
20 and/or replacement of all such products;

21 54. Whether Plaintiffs and the Class are entitled to compensatory, exemplary,
22 and statutory damages, and the amount of such damages; and

23 55. Whether Trex should be ordered to disgorge, for the benefit of the Class,
24 all or part of the ill-gotten profits it received from the sale of defective Trex products, and/or to
25 make full restitution to Plaintiffs and the members of the Class.

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1 Adequacy

2 56. Plaintiffs will fairly and adequately protect the interests of the Class. They
3 have retained counsel with substantial experience in prosecuting consumer class actions, and
4 specifically actions involving defective products.

5 57. Plaintiffs and their counsel are committed to prosecuting this action
6 vigorously on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor
7 their counsel has any interests adverse to those of the Class.

8 58. Plaintiffs and the members of the Class have all suffered and will continue
9 to suffer harm and damages as a result of Trex's unlawful and wrongful conduct. A class action
10 is superior to other available methods for the fair and efficient adjudication of the controversy.
11 Absent a class action, most members of the Class would likely find the cost of litigating their
12 claims to be prohibitive, and would have no effective remedy at law. Because of the relatively
13 small size of the individual Class members' claims, it is unlikely that Class members could afford
14 to seek legal redress for Trex's misconduct. Absent a class action, Class members will continue
15 to incur damages and Trex's misconduct will continue without remedy. Class treatment of
16 common questions of law and fact would also be superior to multiple individual actions or
17 piecemeal litigation in that class treatment will conserve the resources of the courts and the
18 litigants, and will promote consistency and efficiency of adjudication.

19 FIRST CLAIM FOR RELIEF

20 (Violation of the Consumer Legal Remedies Acts, Civ. Code § 1750, et seq. ("CRLA"))

21 59. Plaintiffs hereby incorporate by reference the allegations contained in the
22 preceding paragraphs of this Complaint.

23 60. Trex is a "person" as defined by Civil Code § 1761(c).

24 61. Plaintiffs and the Class members are "consumers" within the meaning of
25 Civil Code § 1761(d).

26 62. The affected products are "goods" within the meaning of California Civil
27 Code § 1761(a).

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1 63. Plaintiffs' purchases of Trex products constituted "transactions" as that
2 term is defined in California Civil Code § 1761(e).

3 64. Trex violated the CLRA's "proscription against a concealment of the
4 characteristic, use, benefit, or quality" of the Trex products by actively concealing in all of its
5 advertising, warranties, and representations the material fact that the Trex products are defective
6 and substantially certain to fail prematurely.

7 65. Trex violated the CLRA's proscription against misrepresentation of the
8 characteristics, use, benefit, or quality of goods by affirmatively misrepresenting at all times to
9 Plaintiffs, Class members, and everyone in the chain of distribution in all of its broadly
10 disseminated marketing and advertising, that its Trex products are moisture resistant and are
11 superior to wood products with respect to splintering when, in fact, they are not. Specifically
12 Trex's representation of material facts regarding its Trex products superior qualities violated (a) §
13 1770(a)(5)'s proscription against representing that goods have uses, characteristics or benefits
14 they do not actually have; (b) § 1770(a)(7)'s proscription against representing that goods are of a
15 particular standard, quality or grade when they are of another; and (c) § 1770(a)(9)'s proscription
16 against advertising goods with the intent not to sell them as advertised.

17 66. Trex's active concealment of material facts violated § 1770(a)(5)'s
18 proscription against representing that goods have uses, characteristics or benefits they do not
19 actually have.

20 67. Trex's active concealment of material facts violated § 1770(a)(7)'s
21 proscription against representing that goods are of a particular standard, quality or grade when
22 they are of another.

23 68. Trex's active concealment of material facts violated § 1770(a)(9)'s
24 proscription against advertising goods with the intent not to sell them as advertised.

25 69. The facts concealed by Trex were material, in that a reasonable person
26 would have considered them important in deciding whether or not to purchase (or to pay the same
27 price for) the Trex products.

1 70. Trex's concealment and deceptive practices, in violation of the CLRA,
2 were designed to induce Plaintiffs and the members of the Class to purchase Trex products.

3 71. Trex intended to do the act that was deceptive and/or fraudulent, namely, to
4 market, distribute and sell Trex products.

5 72. To this day, Trex continues to violate the CLRA by concealing the
6 defective nature of its Trex products and by failing or refusing to reveal to Class members that the
7 cause of the problems with the Trex products is an inherent defect and not a result of improper
8 use or maintenance.

9 73. Plaintiffs, on behalf of themselves and all similarly situated, demand
10 judgment against Trex under the CLRA for injunctive relief in the form of restitution and/or
11 proportional disgorgement of funds paid to Trex to purchase Trex products or repair and and/or
12 replace defective decking material, an injunction requiring Trex to replace the Trex products free
13 of charge, and an award of attorneys' fees.

14 74. Venue is proper pursuant to Civil Code § 1780(c) because Trex does
15 business in this county. A Declaration of Plaintiff Ross establishing this Court as the proper
16 venue for this action is attached hereto as Exhibit A.

17 75. At the time this Complaint is being filed, Plaintiffs are submitting a CLRA
18 notice letter to Trex's counsel, a copy of which is attached hereto as Exhibit B. If Trex fails to
19 provide appropriate relief for its violations of CLRA §§ 1770(a)(5), (7) and (9) within 30 days of
20 receipt of Plaintiffs' notification, in accordance with Civ. Code § 1782(b), Plaintiffs are entitled,
21 under CLRA § 1780, to recover or obtain any of the following relief for Trex's violations of
22 CLRA §§ 1770(a)(5), (7) and (9):

23 actual damages under Civ. Code Section 1780(a)(1);

24 punitive damages under Civ. Code Section 1780(a)(4);

25 attorneys' fees and costs under Civ. Code Section 1780(d); and

26 any other relief the Court deems proper under Civ. Code Section
27 1780(a)(5).

1 **SECOND CLAIM FOR RELIEF**

2 **(Violation of Bus. & Prof. Code §§ 17200 & 17500 (the "Unfair Business Practices Act"))**

3 76. Plaintiffs incorporate by reference the allegations contained in preceding
4 paragraphs of this Complaint.

5 77. Business & Professions Code § 17200 prohibits acts of "unfair
6 competition." As used in this section, "unfair competition" encompasses three distinct types of
7 misconduct: (a) "unlawful...business acts of practices;" (b) "unfair or fraudulent business acts of
8 practices;" and (c) "unfair, deceptive or misleading advertising."

9 78. Trex committed an unlawful business act or practice in violation of the
10 Unfair Business Practices Act, Business and Professions code § 17200, *et seq.*, when it violated
11 the CLRA as alleged in Paragraphs 59-75, above.

12 79. Trex violated the CLRA's proscription against misrepresentation of the
13 characteristics, use, benefit, or quality of goods by affirmatively misrepresenting at all times to
14 Plaintiffs, Class members, and everyone in the chain of distribution in all of its broadly
15 disseminated marketing and advertising, that its Trex products are moisture resistant and are
16 superior to wood products with respect to splintering and other qualities when, in fact, they are
17 not.

18 80. Trex committed unfair and fraudulent business acts and practices in
19 violation of the Unfair Business Practices Act, Business and Professions Code §§ 17200 and
20 17500, *et seq.*, by actively concealing and omitting from its advertising, marketing and other
21 communications (including, *inter alia*, concealments and omissions in Trex's communications
22 with wholesalers, retailers, and others in the chain of distribution that were ultimately passed on
23 to Plaintiffs and the Class) material information about the defective nature of the Trex decking
24 products in a manner that is deceptive and likely to deceive consumers and the public.

25 81. Trex disseminated unfair, deceptive, untrue and/or misleading advertising
26 in violation of the Unfair Business Practices Act, Business & Professions Code §§ 17200 and
27 17500, *et seq.*, when it concealed and/or failed to disclose the true defective nature of the Trex
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1 decking products in its advertising, marketing, and other broadly disseminated representations
2 containing statements that its products were of a certain quality or standard when they were not.

3 82. To this day, Trex continues to violate the Unfair Business Practices Act by
4 continuing to actively conceal the defective nature of the Trex decking by representing to
5 Plaintiffs and members of the Class that the defects result from improper installation or
6 maintenance.

7 83. As a direct and proximate cause of Trex's violation of the Unfair Business
8 Practices Act, Plaintiffs and the Class have suffered or will suffer harm in that they own Trex
9 products that will suffer delamination and other defects, and will be required to incur costs to
10 clean and replace the defective decking products.

11 84. As a proximate result of Trex's violation of the Business and Professions
12 Code § 17200, *et seq.*, Trex has been unjustly enriched at the expense of Plaintiffs and the Class
13 and should be required to make restitution to Plaintiffs and the Class or disgorge its ill-gotten
14 profits pursuant to Sections 17203 of the Business & Professions Code.

15 85. Plaintiffs, on behalf of themselves and for all others similarly situated,
16 demand judgment against Trex for injunctive relief in the form of restitution, and/or proportional
17 disgorgement of funds paid to Trex to purchase the Trex products, and/or disgorgement of funds
18 received by Trex from the purchase of replacement products, or injunctive relief in the form of
19 replacement of the defective products.

20 **THIRD CLAIM FOR RELIEF**

21 **(Breach Of Express Warranty)**

22 86. Plaintiffs hereby incorporate by reference the allegations contained in the
23 preceding paragraphs of this Complaint.

24 87. Trex's warranty provides that "for a period of twenty-five (25) years from
25 the date of original purchase, under normal residential use and service conditions, Trex products
26 shall be free from material defects in workmanship and materials, and shall not check, split,
27 splinter, rot or suffer structural damage from termites or fungal decay."

28 <<http://www.trex.com/warranty>>

