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RICHARD W. WICKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

7 Attorneys for Defendant
TREX COMPANY

ADR

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 ERIC ROSS and BRADLEY S. HURETH,

12 Plaintiffs

Case No.

C 09 00670

13 v.

NOTICE OF REMOVAL

PVT

14 TREX COMPANY, INC, a Delaware
15 corporation,

16 Defendants.

17
18 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453,
19 Defendant Tex Company, Inc. ("Trex"), by its undersigned attorneys, hereby removes this action
20 from the Superior Court of the State of California, in and for the County of Santa Cruz, in which
21 court the case is currently pending, to the United States District Court for the Northern District of
22 California. In support thereof, Trex states as follows:

23 1. Trex exercises its rights under the provisions of 28 U.S.C. §§ 1332, 1441, 1446, and
24 1453, to remove this case from the Superior Court of the State of California, in and for the County of
25 Santa Cruz, styled *Ross, et al. v. Trex Company, Inc.*, Case No. CV161553.

26 2. 28 U.S.C. Section 1441(a) provides:

27 Except as otherwise expressly provided by Act of Congress, any civil action brought
28 in a State court of which the district courts of the United States have original
jurisdiction, may be removed by the defendant or the defendants, to the district court

1 of the United States for the district and division embracing the place where such
2 action is pending.

3 3. This is a civil action that was instituted in state court, and has not been tried.
4 Plaintiffs have filed a Complaint against Trex and a First Amended Complaint. A true and correct
5 copy of the Complaint filed in state court is attached hereto as Exhibit A. A true and correct copy of
6 the First Amended Complaint ("FAC") filed in state court is attached hereto as Exhibit B. Service of
7 the First Amended Complaint was effected on January 20, 2009, when Trex's attorney accepted
8 service on Trex's behalf. A true and correct copy of the Summons received by Trex is attached
9 hereto as Exhibit C.

10 4. As more fully set forth below, this case is properly removed to this Court (a) pursuant
11 to 28 U.S.C. § 1441 and (b) because this Court has subject matter jurisdiction over the case pursuant
12 to 28 U.S.C. § 1332(d) and § 1332(b).

13 **SUBJECT MATTER JURISDICTION**

14 **I. THIS CLASS ACTION IS REMOVABLE UNDER THE CLASS ACTION FAIRNESS
15 ACT, 28 U.S.C. §§ 1332(d), 1453**

16 5. This case is being removed subject to the provisions of the Class Action Fairness Act,
17 codified at 28 U.S.C. §§ 1332(d), 1453 ("CAFA").

18 6. As set forth below, this Court has subject matter jurisdiction pursuant to CAFA, 28
19 U.S.C. § 1332(d), because: (1) the putative class action consists of at least 100 proposed class
20 members; (2) the citizenship of at least one putative class member is different from that of Trex; and
21 (3) the aggregate amount placed in controversy by the claims of the named Plaintiffs and the
22 proposed class members exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

23 **A. The Putative Class Consists Of More Than 100 Members**

24 7. Plaintiffs purport to bring this action on behalf of a California Class pursuant to
25 California Code of Civil Procedure §382 and on behalf of a National Class pursuant to Rule 23 of
26 the Nevada Rules of Civil Procedure and "to the extent applicable, the analogous provisions of
27 Federal rule of Civil Procedure 23." FAC ¶¶ 28-29.

28 8. Plaintiffs allege that "Plaintiffs and thousands of others in California and across the

1 United States own inherently defective Trex decking products[.]” FAC ¶ 5. Plaintiffs further allege
2 that “the number of affected structures constructed from Trex products is in the tens of thousands,
3 such that joinder is impracticable.” FAC ¶ 36.

4 9. Based upon these, and other allegations, the aggregate number of class members in
5 Plaintiffs’ proposed state and nationwide classes are each at least 100 for purposes of satisfying 28
6 U.S.C. § 1332(d)(5)(B).

7 **B. The Minimal Diversity Of Citizenship Requirement Is Satisfied**

8 10. At the time Plaintiffs commenced this action in state court, and now at the time of
9 removal, there was, and is minimal diversity of citizenship as contemplated by CAFA, 28 U.S.C.
10 § 1332(d)(2)(A).

11 11. As alleged in the Complaint, named Plaintiffs Eric Ross and Bradley S. Hureth are
12 California citizens. FAC ¶ 6-7.

13 12. As alleged in the Complaint, Trex is a corporation that is incorporated in Delaware
14 and has its principal place of business in Virginia. FAC ¶ 8. A “corporation shall be deemed to be a
15 citizen of any State by which it has been incorporated and of the State where it has its principal place
16 of business.” 28 U.S.C. § 1332(c)(1). Thus, for purposes of diversity of citizenship under 28 U.S.C.
17 § 1332, Trex is a citizen of a state other than California.

18 13. Accordingly, the citizenship of at least one putative class member is different from
19 the citizenship of Trex for the purposes of satisfying 28 U.S.C. § 1332(d)(2)(A).

20 **C. The Amount In Controversy Requirement Under CAFA Is Satisfied**

21 14. Under CAFA, the claims of the individual class members in a class action are
22 aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. See
23 28 U.S.C. § 1332(d)(6). Plaintiffs’ putative class claims meet the jurisdictional threshold set forth in
24 § 1332(d)(6), in that, if awarded, the aggregate amount of the damages and other relief sought by
25 Plaintiffs for themselves and the proposed class members will exceed \$5,000,000, exclusive of
26 interest and costs.

27 15. The FAC alleges that Trex sold plaintiff and the purported “tens of thousands” in the
28

1 putative class “inherently defective” decking products that “even when installed and maintained in
2 accordance with Trex’s instructions” will “delaminate,’ including flaking rotting, cracking and
3 splintering” and “there is no repair that will correct the problems.” FAC ¶¶ 2-3, 36.

4 16. Plaintiffs allege five separate cause of action: (1) violation of the California
5 Consumer Legal remedies Acts; (2) violation of California Business and Professions Code §§17200
6 & 17500; (3) violation of the Nevada Trade Regulation and Practices Act; (4) breach of express
7 warranty; and (5) unjust enrichment. FAC ¶¶ 62-109.

8 17. Based on these allegations, Plaintiffs seek several forms of relief, including:
9 compensatory damages, exemplary and statutory damages, restitution or disgorgement of profits,
10 injunction, attorney’s fees and costs. FAC ¶¶113-115.

11 18. Plaintiffs allege the class contains “tens of thousands.” FAC ¶ 36. In order to meet
12 the \$5 million amount-in-controversy threshold, the exposure for the named Plaintiffs and each
13 member of the putative class as defined by plaintiffs only needs to be \$500 per person, assuming a
14 class of 10,000. Here, Plaintiff Eric Ross alleges he spent \$2,926.84 on Trex decking and spent
15 approximately \$2,000 to have it installed. FAC ¶ 6. Plaintiff Bradley S. Hureth alleges he spent
16 \$1,300 on Trex decking products. FAC ¶ 7. Thus, based upon the claims of named plaintiffs, the
17 \$500 per plaintiff threshold is easily satisfied.

18 19. The other damages alleged and relief requested may also independently satisfy the \$5
19 million threshold. CAFA’s legislative history makes clear that in its assessment of whether the \$5
20 million threshold is met, a court should include the value of all relief sought by the claimants,
21 including claims for punitive damages, injunction, disgorgement of profits and statutory attorney’s
22 fees. See S. Rep. 109-14, reprinted in 2005 WL 627977, at *42-44 (1st Sess. 2005) (in determining
23 whether the amount in controversy threshold is met under CAFA, a court must include the value of
24 all relief sought by the claimants).

25 20. CAFA’s legislative history also makes clear that doubts regarding the maintenance of
26 class actions in state or federal court should be resolved in favor of federal jurisdiction. See, e.g., S.
27 Rep. 109-14, reprinted in 2005 WL 627977, at *43 (“[o]verall, new section 1332(d) is intended to
28

1 expand substantially federal court jurisdiction over class actions”); accord McMorris v. TJX
2 Companies, Inc., 493 F.Supp.2d 158, 162 (D. Mass. 2007) (“one of CAFA’s primary mechanisms
3 for expanding jurisdiction is to replace the strict complete diversity requirement with a lenient rule
4 now granting jurisdiction if any diversity exists between plaintiffs and defendants”).

5 21. In sum, because there is minimal diversity between the parties and because the
6 \$5,000,000 amount in controversy requirement is satisfied, this case is properly removed pursuant to
7 CAFA, 28 U.S.C. §§ 1332(d), 1453.

8 **II. THIS ACTION IS REMOVABLE UNDER THE DISTRICT COURT’S**
9 **TRADITIONAL DIVERSITY JURISDICTION**

10 22. The present case is also removed on diversity grounds under 28 U.S.C. §§ 1332(a)
11 and 1441(b) and the Court has supplemental jurisdiction over the claims of the putative class under
12 28 U.S.C. § 1367(a).

13 23. The Court has original jurisdiction over Plaintiffs’ claims based upon traditional
14 diversity jurisdiction as set forth in 28 U.S.C. § 1332(a). Under § 1332(a), a federal district court
15 has jurisdiction over any claim where there exists complete diversity between the parties and where
16 the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. See
17 28 U.S.C. § 1332(a). In the context of a class action, where complete diversity exists between the
18 named plaintiff and the defendant, and at least one named plaintiff satisfies the amount in
19 controversy requirement, a federal district court should exercise supplemental jurisdiction over the
20 claims of the putative class members. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S.
21 546, 549 (2005).

22 24. The enactment of CAFA did not abrogate, supplant, or otherwise restrict the
23 traditional diversity jurisdiction conferred upon the federal courts by Section 1332(a). See Steel City
24 Group v. Global Online Direct, Inc., No. 2:06-cv-1501, 2006 WL 3484318, at *1 (W.D. Pa. Nov.
25 30, 2006); Dixon v. Nan Ya Plastics Corp., Civil Action No. 07-227-C, 2007 WL 4561136, at *3-5
26 (M.D. La. Dec. 20, 2007) (analyzing diversity jurisdiction under both CAFA and traditional
27 diversity); see also Allapattah, 545 U.S. at 571-72 (“The CAFA ... does not moot the significance of
28

1 our interpretation of § 1367, as many proposed exercises of supplemental jurisdiction, even in the
 2 class-action context, might not fall within the CAFA's ambit"); Dowell v. Debt Relief Am., L.P.,
 3 No. 2:07-CV-27 (JCH), 2007 WL 1876478, at *2 (E.D. Mo. June 27, 2007) ("The supplemental
 4 jurisdiction statute, 28 U.S.C. § 1367 ... also allows a district court to exercise jurisdiction over a
 5 class action even if the \$5,000,000 amount is not satisfied as long as the other elements of diversity
 6 jurisdiction are present and at least one named plaintiff satisfies the \$75,000 amount in controversy
 7 requirement found in § 1332(a)").

8 **A. Complete Diversity Of Citizenship Is Satisfied Under Traditional Diversity**
 9 **Principles**

10 25. At the time Plaintiffs filed their FAC and at the time of removal, there was and is
 11 complete diversity of citizenship between the parties, as contemplated by 28 U.S.C. §§ 1332(a) and
 12 1441(b). In the context of a class action, an action is removable where complete diversity exists
 13 between the named plaintiff and the defendant. See Allapattah, 545 U.S. at 549.

14 26. Plaintiffs are citizens of the State of California. FAC ¶¶ 6-7.

15 27. Under traditional diversity principles, Trex is a citizen of a State other than
 16 California. 28 U.S.C. § 1348. Accordingly, there is complete diversity of citizenship between
 17 Plaintiffs and Trex for the purposes of satisfying 28 U.S.C. § 1332(a)(1).

18 **B. The Amount In Controversy Requirement Is Satisfied Under Traditional**
 19 **Diversity Principles**

20 28. The amount in controversy requirement of 28 U.S.C. § 1332(a) is satisfied in that the
 21 amount in controversy with respect to Plaintiffs' claims exceeds the sum of \$75,000, exclusive of
 22 interest and costs.

23 29. Plaintiffs allege five separate cause of action: (1) violation of the California
 24 Consumer Legal remedies Acts; (2) violation of California Business and Professions Code §§17200
 25 & 17500; (3) violation of the Nevada Trade Regulation and Practices Act; (4) breach of express
 26 warranty; and (5) unjust enrichment. FAC ¶¶ 62-109.

27 30. Based on these allegations, Plaintiffs seek several forms of relief, including:
 28 compensatory damages, exemplary and statutory damages, restitution or disgorgement of profits,

1 injunction, attorney's fees and costs. FAC ¶¶113-115.

2 31. Upon satisfaction of certain requirements thereof, the California Consumer Legal
3 Remedies Act provides for punitive damages, injunction, and attorneys fees. Cal.Civ. Code
4 §§1780(a). The California Unfair Business Practices Act provides for injunctive relief. Cal.
5 Business & Prof. Code ¶¶ 17200 *et seq.*

6 32. Finally, Plaintiffs seek "institution of a constructive trust disgorging all profits,
7 benefits, and other compensation obtained by Trex[.]" FAC ¶ 109. Plaintiffs allege Trex sold
8 defective products since approximately 2003. FAC ¶ 4. Plaintiffs allege this is a latent defect to
9 which equitable tolling applies, thereby extending the applicable period beyond the four year statute
10 of limitations. FAC ¶¶ 25-27. Plaintiffs allege the number of products sold is in the tens of
11 thousands. FAC ¶ 36. Each named plaintiff spent more than \$1,000 on the product. FAC ¶ 6-7.
12 Profits from more than 10,000 products sold nationally for more than 5 years for at least \$1,000 each
13 will easily reach the \$75,000 threshold.

14 33. Thus, the monetary threshold is met because if successful, each plaintiff would be
15 entitled to damages exceeding \$75,000. Moreover, Plaintiffs seek a constructive trust of profits from
16 decking products sold nationally since 2005 that would also exceed \$75,000.

17 34. As a matter of law, the amount in controversy is insufficient "only when, 'from the
18 face of the pleadings, it is apparent, to a legal certainty, ... that the plaintiff never was entitled to
19 recover' a sum equal to, or in excess of, the jurisdictional minimum." Barrett v. Lombardi, 239 F.3d
20 23, 30 (1st Cir. 2001) (quoting St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289
21 (1938)); see also Geschke v. Air Force Ass'n, 425 F.3d 337, 341 (7th Cir. 2005) ("[o]nly if it were
22 legally impossible for [plaintiff] to win on claims totaling more than \$75,000 would her suit fail for
23 want of jurisdiction"). Although Trex maintains that Plaintiffs' claims are without merit, it is not
24 apparent, to a legal certainty, from the face of the FAC that Plaintiffs would not be entitled to
25 recover more than \$75,000.00, exclusive of interest and costs.

26 35. Accordingly, Plaintiffs' First Amended Complaint satisfies the amount in controversy
27 requirement and the Court should exercise jurisdiction over Plaintiffs' individual claims and
28

1 supplemental jurisdiction over the claims of the putative class. See Allapattah, 545 U.S. at 549.

2 **PROCEDURAL COMPLIANCE**

3 36. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal
4 is filed within thirty (30) days after the receipt by Trex of a copy of the Summons and the FAC
5 pleading setting forth the claims for relief upon which this removal is based.

6 37. Pursuant to 28 U.S.C. § 1441 et seq., the right exists to remove this case from the
7 Superior Court of the State of California, in and for the County of Santa Cruz, in which court the
8 case is currently pending, to the United States District Court for the Northern District of California.

9 38. The United States District Court for the Northern District of California embraces the
10 county in which the state court action is now pending, and thus, this Court is a proper venue for this
11 action pursuant to 28 U.S.C. § 101. This civil action may properly be assigned to the San Jose
12 division of this Court pursuant to Civil L.R. 3-2(c), because a substantial part of the events or
13 omissions which give rise to the claim occurred in the counties listed in Civil L.R. 3-2(e).

14 39. No previous application has been made for the relief requested herein.

15 40. Pursuant to the provisions of 28 U.S.C. § 1446(a), attached hereto is a copy of: (1) the
16 Complaint filed in state court (attached hereto as Exhibit A); and (2) the First Amended Complaint
17 filed in state court (attached hereto as Exhibit B); the Summons served on Trex (attached hereto as
18 Exhibit C).

19 41. Written notice of the filing of this Notice of Removal will be served upon counsel for
20 Plaintiffs through its attorneys of record, Jonathan D. Selbin, Lieff Cabraser Heimann & Bernstein,
21 LLP, as well as Plaintiff's other attorneys of record listed on the First Amended Complaint.

22 42. A true and correct copy of this Notice of Removal will be filed with the clerk of the
23 Superior Court of the State of California, in and for the County of Santa Cruz, as required by law,
24 and served upon counsel for Plaintiffs.

25 43. In filing this Notice of Removal, Trex does not waive, and specifically reserves, all
26 defenses, exceptions, rights and motions. No statement herein or omission herefrom shall be
27 deemed to constitute an admission by Trex of any of the allegations of or damages sought in the
28

1 **WHEREFORE**, defendant Trex Company, Inc. hereby removes this case from the Superior
2 Court of the State of California, in and for the County of Santa Cruz, where it is now pending to this
3 Court.

4 Dated: February 13, 2009

K&L GATES LLP

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6 By: 

Matthew G. Ball (SBN 208881)
matthew.ball@klgates.com

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8 Attorneys for Defendant Trex Company, Inc.
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18 [additional counsel listed on signature pages]

19 *Attorneys for Plaintiffs and the Proposed Class*

20 SUPERIOR COURT OF CALIFORNIA
 21 SANTA CRUZ COUNTY

22 ERIC ROSS, THOMAS MABREY, JR. and
 23 DIANNA SPALLJERO, 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 CALVO, CLERK
 BY DEBORAH ROJAS
 DEPUTY, SANTA CRUZ COUNTY

CASE NO.: 09-161553

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.

28

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").

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

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

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

21 **Ascertainability & Numerosity**

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

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

1 Community of Interest

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

5 Typicality

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

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

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

16 Predominance of Common Issues

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

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

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

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

27 44. Whether Trex represented that its products were of a particular standard,
28 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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Adequacy

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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).

28

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.

28

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).

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SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

81. Trex disseminated unfair, deceptive, untrue and/or misleading advertising in violation of the Unfair Business Practices Act, Business & Professions Code §§ 17200 and 17500, *et seq.*, when it concealed and/or failed to disclose the true defective nature of the Trex

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>>

1 88. Trex further expressly warranted that "Trex takes the natural beauty of
2 wood, but leaves behind all the rotting and splintering."

3 <<http://www.trex.com/decking/default.aspx>>

4 89. Trex also provided consumers with photographs, samples or models of
5 decking and fencing that did not show any signs of the Defects.

6 90. The warranties, affirmations, promises, assurances, descriptions and
7 models provided by Trex were the basis of the bargain for Plaintiffs and the Class Members in
8 purchasing or acquiring the Trex products.

9 91. Trex has breached its express warranty to Plaintiffs and Class Members in
10 that the Trex products were defective from the day they were sold and are substantially certain to
11 prematurely experience delamination and other manifestations of the Defects.

12 92. Trex has been put on notice of its breach of express warranties by Plaintiffs
13 and Class members through warranty claims previously made and through notice provided by
14 Plaintiffs and Class Members prior to the filing of this Complaint.

15 93. As a direct result of the failure of the Trex products to perform as
16 warranted, Plaintiffs and the Class have incurred and will continue to incur expenses to maintain,
17 clean, and replace Trex decking products.

18 94. Any contractual language contained in Trex's express warranty that
19 attempts to limit remedies is unconscionable, fails to conform to the requirements for limiting
20 remedies under applicable law, causes the warranties to fail of their essential purpose, and is,
21 thus, unconscionable and void.

22 95. Language in Trex's limited warranty that purports to exclude the exact
23 types of Defects that affects Plaintiffs' and proposed Class members' Trex products is unilaterally
24 imposed in a contract of adhesion that is typically provided after the sale, and is therefore
25 unconscionable and causes the entire warranty to fail of its essential purpose.

FOURTH CLAIM FOR RELIEF**(Unjust Enrichment)**

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2
3 96. Plaintiffs hereby incorporate by reference the allegations contained in the
4 preceding paragraphs of this Complaint.

5 97. Trex received monies as a result of Plaintiffs' and Class members'
6 purchases of Trex products, and wrongfully accepted and retained these benefits to the detriment
7 of Plaintiffs and Class members.

8 98. Trex's enrichment at the expense of Plaintiffs and Class members was
9 unjust.

10 99. As a result of Trex's wrongful conduct, Plaintiffs and the Class are entitled
11 to restitution from and institution of a constructive trust disgorging all profits, benefits, and other
12 compensation obtained by Trex, plus attorneys' fees, costs, and interest thereon.

IX. RELIEF REQUESTED

13
14 Plaintiffs, on behalf of themselves and all others similarly situated, request the
15 Court enter judgment against Trex, as follows:

16 100. An order certifying the proposed plaintiff Class, designating Plaintiffs as
17 the named representatives of the Class, and designating the undersigned as Class Counsel;

18 101. A declaration that Trex is financially responsible for notifying all Class
19 members of the problems with Trex material;

20 102. An order enjoining Trex from further deceptive advertising, marketing,
21 distribution, and sales practices with respect to Trex and to remove and replace Plaintiffs' and
22 Class members' decks with a suitable alternative decking material of Plaintiffs' and Class
23 members' choosing;

24 103. An award to Plaintiffs and the Class of compensatory, exemplary, and
25 statutory damages, including interest thereon, in an amount to be proven at trial;

26 104. A declaration that Trex must disgorge, for the benefit of the Class, all or
27 part of the ill-gotten profits it received from the sale of Trex material, or to make full restitution to
28 Plaintiffs and the members of the Class;

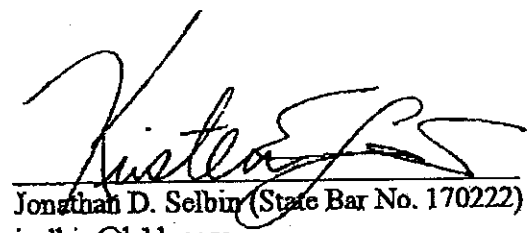
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- 105. An award of attorneys' fees and costs, as allowed by law;
- 106. An award of pre-judgment and post-judgment interest, as provided by law;
- 107. For leave to amend the Complaint to conform to the evidence produced at trial; and
- 108. Such other or further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

109. Plaintiffs demand a trial by jury of any and all issues in this action so triable.

DATED this 30th day of September, 2008.



Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com

Kristen E. Law (State Bar No. 222249)
klaw@lchb.com

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Robert D. Gary
Jori Naegele
GARY, NAEGELE & THEADO, LLC
446 Broadway
Lorain, OH 44052-1797
Telephone: (440) 244-4809
Facsimile: (440) 244-3462

Attorneys for Plaintiffs and the Proposed Class

Exhibit A

4 13 09

1 Jonathan D. Selbin (State Bar No. 170222)
iselbin@lchb.com
2 Kristen E. Law (State Bar No. 222249)
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
3 275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008

5 Attorney for Plaintiffs and the Proposed Class
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CRUZ
10

11 THOMAS MABREY, JR. and ERIC
ROSS, individually and on behalf of all
12 others similarly situated,

CASE NO.: _____

13 Plaintiffs,

CLASS ACTION

14 v.

VENUE AFFIDAVIT OF ERIC ROSS

15 TREX COMPANY, a Delaware
corporation,

16 Defendant.
17

18
19 I, ERIC ROSS, hereby declare and state as follows:

20 1. I am over the age of 18. The facts contained in this declaration are based
21 on my personal knowledge, and if called upon to do so, I could and would testify competently
22 hereto.

23 2. I am, and have at all times relevant to this action been, a resident of the
24 County of Santa Cruz, California.
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3. In or around June 2005, I purchased Trex Accents decking material in the approximate amount of \$2,926.84. I purchased this decking material from a Santa Cruz County store called Lumbermens. In or around January 2008, the Trex decking boards began displaying signs of delamination. This decking material is the subject of my claims against the Trex Company.

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

Dated: September 29 2008

By: Eric Ross
ERIC ROSS

EXHIBIT B

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

ATTORNEYS AT LAW

760 THIRD AVENUE, 40TH FLOOR
 NEW YORK, NEW YORK 10017-2024
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 mail@lchb.com
 www.lchb.com

SAN FRANCISCO
 WASHINGTON, D.C.
 BEVERLY HILLS
 NASHVILLE

JONATHAN D. SELBIN
 PARTNER

September 30, 2008

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Andrew Ferrari
 Chairman
 Trex Company, Inc.
 160 Exeter Drive
 Winchester, VA 22603-8614

William Gupp
 Senior Vice President/General Counsel
 Trex Company, Inc.
 160 Exeter Drive
 Winchester, VA 22603-8614

Re: Notice and Demand Letter Re: Trex Decking Delamination and Moisture Defects

To Trex Company, Inc.:

Together with our co-counsel, Cohen, Milstein, Hausfeld & Toll, PLLC and Gary, Naegele & Theado, LLC, we represent Eric Ross, Thomas Mabrey, Jr. and Dianna Spalliero. Pursuant to the California Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.* (specifically, §§ 1782(a)(1) and (2)), Mr. Ross, Mr. Mabrey and Ms. Spalliero, on behalf of themselves and all other similarly situated consumers nationwide (collectively, the "Class"), through their undersigned counsel, hereby notify you that Trex Company, Inc. ("Trex") is alleged to have violated the CLRA by warranting, marketing, advertising, and selling Trex decking products that Trex knew were inherently defective because when installed and maintained in accordance with Trex's instructions, the decking products experience delamination and moisture-related defects (the "Defects") and are substantially certain to fail well before their warranted and expected useful life. We hereby demand that Trex correct, repair, replace or otherwise rectify the goods within 30 days from your receipt of this letter.

Mr. Ross, a resident of Santa Cruz, Santa Cruz County, California, purchased Trex decking in or around June 2005, for approximately \$2,926.84. The entire cost of his deck, which he installed himself, totaled approximately \$5,000. In or about January 2007, Mr. Ross's deck began to manifest the delamination Defect. An expert has inspected Mr. Ross's deck and confirmed that the delamination Defect has manifested.

Trex Company, Inc.
September 30, 2008
Page 2

Mr. Mabrey, a resident of Inverness, Cook County, Illinois, purchased Trex Escape decking material through a contractor in or around March 2005. He paid approximately \$13,600 for the decking materials and labor. Several months after his deck was installed, Mr. Mabrey's deck began to manifest the moisture-related Defect. An expert has inspected Mr. Mabrey's deck and has confirmed that the moisture-related Defect has manifested.

Ms. Spalliero is a resident of Chicago, Cook County, Illinois. She purchased Trex decking material through a contractor in approximately June 2007 for approximately \$12,000, inclusive of materials and labor. Roughly one year after her deck was installed, it started to manifest the moisture-related Defect. An expert has inspected Ms. Spalliero's deck and has confirmed that the moisture-related Defect has manifested.

The Defects have caused significant financial consequences for our clients and consumers throughout the country. Trex knew of the Defects, and concealed them from consumers and the public in a manner that violates the CLRA.

Trex's misrepresentations and its active concealment of and failure to disclose the Defects in warranting, marketing, advertising, and selling Trex decking constitute the following violations of the CLRA:

1. Trex has represented that its goods have characteristics, uses or benefits that they do not have (§ 1770(a)(5));
2. Trex has falsely represented that its goods are of a particular standard, quality or grade when they are of another (§ 1770(a)(7)); and
3. Trex has advertised its goods with the intent not to sell them as advertised (§ 1770(a)(9)).

Pursuant to Section 1782 of the CLRA, and based on the foregoing, we hereby demand that within thirty (30) days of receiving this letter, Trex agree to replace the Trex decking owned by Plaintiffs and others like them. Specifically, we demand that Trex: (1) replace free of charge all defective Trex decking owned by any member of the Class, including the cost of labor for replacement; or (2) agree to reimburse any and all Class members who own Trex decking with a manifest Defect for the full amount they paid for the Trex decking materials, plus the labor costs that were required to install the decking and that will be required to remove it.

Please be advised that should Trex refuse this demand, Mr. Ross, Mr. Mabrey and Ms. Spalliero will seek monetary damages for themselves and the Class, as well as an award of injunctive relief, restitution, punitive damages, attorneys' fees and costs, and any other relief a court deems proper.

If you have any questions regarding this notice and demand, feel free to contact me at (212) 355-9500.

Trex Company, Inc.
September 30, 2008
Page 3

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Selbin', with a large, stylized initial 'J'.

Jonathan D. Selbin

cc: Elizabeth A. Alexander
Richard S. Lewis
James J. Pizzirusso
Robert D. Gary
Jori Naegle
Patrick J. Perrone

| | | |
|--|--|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ Santa Cruz Branch 701 Ocean Street, Room 110 Santa Cruz, CA 95060 | | For Court Use Only FILED SEP 30 2008 ALEX CALVO, CLERK BY DEBORAH ROJAS DEPUTY, SANTA CRUZ COUNTY |
| Watsonville Branch 1 Second Street, Room 300 Watsonville, CA 95076 | | |
| PLAINTIFF: ERIC ROSS DEFENDANT: TREX COMPANY INC | | |
| CASE MANAGEMENT INFORMATION AND SETTING | | CASE NO: CISCV161553 |

This case is in Santa Cruz County's Case Management Program. It is the Duty of each party to be familiar with the California rules of court and the date, time and place of the first case management conference.

This notice must be served with the summons on all defendants and cross-defendants. Notice of any other pending case management conference must be served on subsequently named defendants and cross-defendants.

ATTENTION DEFENDANT: YOU HAVE 30 DAYS AFTER THE SUMMONS IS SERVED ON YOU TO FILE A RESPONSE TO THE COMPLAINT. THE DATE BELOW DOES NOT EXTEND THE TIME TO FILE A RESPONSE. SEE THE SUMMONS FOR INSTRUCTIONS FOR RESPONDING TO THE SUMMONS AND COMPLAINT.

The first Case Management Conference hearing date is:

Date: 01/28/09

Time: 8:29

Department No.: 4

Address of the Court: 701 Ocean Street, Santa Cruz, California

1 Second Street, Watsonville, California

Telephonic court appearances are provided through CourtCall to the court. To make arrangements to appear at the Case Management Conference by telephone, please call the program administrator for CourtCall at (310) 572-4670 or (888) 882-6878 at least five (5) court days prior to the hearing. DO NOT CALL THE COURT.

THE LAWYER'S PLEDGE

In order to raise the standards of civility and professionalism among counsel and between the Bench and the Bar, I hereby pledge the following:

1. To at all times comply with the California Rules of Professional Conduct;
2. To honor all commitments;
3. To be candid in all dealings with the court and counsel;
4. To uphold the integrity of our system of justice and not compromise personal integrity for the sake of a client, case or cause;
5. To seek to accomplish the client's legitimate goals by the most efficient and economical methods possible;
6. To act in a professional manner at all times, to be guided by a fundamental sense of fair play in all dealings with counsel and the court, and to be courteous and respectful to the court;
7. To be on time;
8. To be prepared for all court appearances - to be familiar with all applicable court rules;
9. To adhere to the time deadlines set by statute, rule, or order;
10. To avoid visual displays of pique in response to rulings by the court;
11. To discourage and decline to participate in litigation or tactics that are without merit or are designed primarily to harass or drain the financial resources of the opposing party;
12. To avoid any communications with the judge concerning a pending case unless the opposing party or lawyer is present, or unless permitted by court rules or otherwise authorized by law;
13. To refrain from impugning the integrity of the judicial system, its proceedings, or its members;
14. To treat all court personnel with the utmost civility and professionalism;
15. To remember that conflicts with opposing counsel are professional and not personal - vigorous advocacy is not inconsistent with professional courtesy;
16. To refrain from derogatory statements or discriminatory conduct on the basis of race, religion, gender, sexual orientation or other personal characteristic;
17. To treat adverse witnesses and litigants with fairness and due consideration;
18. To conduct discovery proceedings as if a judicial officer were present;
19. To meet and confer with opposing counsel in a genuine attempt to resolve procedural and discovery matters;
20. To not use discovery to harass the opposition or for any other improper purpose;
21. To not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation;
22. To not attribute to an opponent a position not clearly taken by that opponent;
23. To avoid unnecessary "confirming" letters and to be scrupulously accurate when making any written confirmation of conversations or events;
24. To not propose any stipulation in the presence of the trier of fact unless previously agreed to by the opponent;
25. To not interrupt the opponent's legal argument;
26. To address opposing counsel, when in court, only through the court;
27. To not seek sanctions against or disqualification of another lawyer to attain a tactical advantage or for any other improper purpose;
28. To not schedule the service of papers to deliberately inconvenience opposing counsel;
29. To refrain, except in extraordinary circumstances, from using the fax machine to demand immediate responses for opposing counsel.

ADR INFORMATION PACKAGE

Included in this package:

- Cover Page
- Alternative Dispute Resolution Program Notice
- Local Form SUPCV 1012
(Stipulation and Order to Attend Judicial Mediation or Private Arbitration)

ATTENTION PLAINTIFFS/CROSS-COMPLAINANTS

PLAINTIFFS SHALL SERVE A COPY OF THIS ADR INFORMATION PACKAGE ON EACH DEFENDANT ALONG WITH THE COMPLAINT. CROSS-COMPLAINANTS SHALL SERVE A COPY OF THIS ADR INFORMATION PACKAGE ON ANY NEW PARTIES TO THE ACTION ALONG WITH THE CROSS-COMPLAINT
(CRC 3.221)

TO: ALL CIVIL LITIGANTS

RE: JUDICIAL MEDIATION PROGRAM OF SANTA CRUZ OR OPTION FOR
PRIVATE ARBITRATION

Alternate Dispute Resolution (ADR) is a process, other than formal litigation, in which a neutral person assists the parties in resolving their dispute. Santa Cruz County's ADR process is Judicial Mediation. If the parties agree to Mediation, it is the policy of this Court to assign appropriate cases to mediation without making a determination of the value of the case.

Appropriate cases will be assigned to Judicial Mediation from the Case Management Conference Calendar. The parties may stipulate to Mediation prior to the Case Management Conference by written stipulation on local form SUPCV 1012. Case Management Conference Statements and requests for continuances should be submitted at least ten days in advance of the hearing.

FOR MORE INFORMATION REGARDING SANTA CRUZ COUNTY'S MEDIATION PROGRAM, SEE LOCAL RULE 7.1 OR CONTACT THE CIVIL CALENDAR DEPARTMENT (SANTA CRUZ) AT (831) 420-2200 OR THE WATSONVILLE BRANCH AT (831) 786-7200.

You may also stipulate to use a private arbitration or mediation service with the same local form 1012. This local form is required to ensure that the case is tracked properly by Court staff.

| | | |
|--|----------------|--------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): | TELEPHONE NO.: | For Court Use Only |
| ATTORNEY FOR (NAME): | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ <input type="checkbox"/> Santa Cruz <input type="checkbox"/> Watsonville Branch 701 Ocean Street, Room 110 1430 Freedom Boulevard Santa Cruz, CA 95060 Watsonville, CA 95076 | | |
| Plaintiff/Petitioner: | | |
| Defendant/Respondent: | | |
| STIPULATION AND ORDER TO ATTEND JUDICIAL MEDIATION OR PRIVATE ARBITRATION Must be filed 10 days before Case Management Conference | | CASE NO. |

FOR GOOD CAUSE as stated in the attached supporting declaration,
 CASE MANAGEMENT CONFERENCE CURRENTLY SET FOR: (DATE) _____
 CHECK ONLY ONE BOX:

1. () The parties stipulate to court ordered mediation.
2. () The parties stipulate to private mediation or arbitration, to be arranged by the parties and completed within 120 days of the current CMC date stated above. The parties agree that such process shall be a good faith attempt to resolve the case.

SIGNATURES OF COUNSEL:

 TYPE NAME: _____
 DATE: _____ ATTORNEY FOR: _____

 TYPE NAME: _____
 DATE: _____ ATTORNEY FOR: _____

ADDITIONAL SIGNATURES IN ATTACHMENT "A"

ORDER

BASED ON THE STIPULATION OF THE PARTIES, THE SUPPORTING DECLARATION,
 AND FINDING GOOD CAUSE, THE APPLICATION IS HEREBY GRANTED

SET FOR JUDICIAL MEDIATION ON: _____ AT: _____ a.m./p.m.
 VACATE CMC CURRENTLY SET FOR: _____ AT: _____ a.m./p.m.

Date: _____

 JUDGE OF THE SUPERIOR COURT

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Attorneys for Plaintiffs and the Proposed Class

SUPERIOR COURT OF CALIFORNIA

SANTA CRUZ COUNTY

FILED BY FAX

ERIC ROSS and BRADLEY S. HURETH, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

TREX COMPANY, INC., a Delaware
corporation,

Defendant.

CASE NO.: CV 161553

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiffs Eric Ross and Bradley S. Hureth ("Plaintiffs") allege the following on behalf of
themselves and all others similarly situated:

I. INTRODUCTION

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

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

4 2. Trex decking products produced in its Nevada manufacturing facility
5 starting in or before 2003 are inherently defective because, even when installed and maintained in
6 accordance with Trex's instructions, they experience "delamination," including flaking, rotting,
7 cracking and splintering and are substantially certain to fail well before their warranted and
8 expected useful life ("the Defect").

9 3. This Defect is latent and exists in the Trex decks at the time of sale
10 regardless of proper installation, maintenance and cleaning, and there is no repair that will correct
11 the problems.

12 4. Trex has been manufacturing, warranting, advertising and selling Trex
13 products it knew or should have known were inherently defective since approximately 2003, and
14 perhaps before.

15 5. As a result of the Defect, Plaintiffs and thousands of others in California
16 and across the United States own inherently defective Trex decking products that fail to perform
17 as warranted and advertised by Trex, did not get what they paid for, and have incurred or will
18 incur thousands of dollars in damages to replace their decks.

19 **II. PARTIES**

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

26 7. Plaintiff Bradley S. Hureth resides in Rialto, California. He purchased
27 Trex decking in August of 2006 for \$1,300 from a local contractor and the contractor installed the
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1 deck. In or about May 2008, Plaintiff Hureth's deck began to show signs of delamination in
2 multiple locations and the delamination has become more severe over time.

3 8. Trex is incorporated in Delaware and has its principal place of business in
4 Winchester, Virginia. It has a manufacturing facility in Nevada where it produced the defective
5 Trex products. It is the country's largest manufacturer of wood-plastic composite decking,
6 railing, fencing and trim products. Its products are marketed and sold under the brand name
7 "Trex." The company does business throughout California and the United States. It
8 manufactured, warranted, advertised and sold the defective decking products that were installed
9 on Plaintiffs' homes and those of thousands of others throughout California and the United States.

10 **III. JURISDICTION**

11 9. This Court has jurisdiction over this action pursuant to California Code of
12 Civil Procedure § 410.10. Jurisdiction over Trex is proper because it has purposefully availed
13 itself of the privilege of conducting business activities in California by selling Trex decking
14 materials to Plaintiffs Ross and Hureth and members of the Class, by maintaining a distribution
15 center in this State, and because it has generally maintained systematic and continuous business
16 contacts with this State.

17 **IV. VENUE**

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

23 11. A venue affidavit of Eric Ross pursuant to California Civil Code § 1780(c)
24 is attached hereto as Exhibits A.

25 **V. CHOICE OF LAW**

26 12. No enforceable choice-of-law agreement governs here or compels the
27 application of any particular states' laws.
28

1 13. California law governs the claims asserted herein by Eric Ross and Bradley
2 Hureth on behalf of the California Class. California, which seeks to protect the rights and
3 interests of California and other U.S. residents against a company doing business in California,
4 has a greater interest in the claims of Eric Ross, Bradley Hureth and the members of the
5 California Class than any other State.

6 14. California has the most significant relationship with Eric Ross, Bradley
7 Hureth and the California Class and the events and occurrences that form the basis of their claims.
8 Trex distributes its product in California and maintains a distribution center in the State. Plaintiff
9 Ross resides in Santa Cruz County, California. He purchased Trex decking material in California,
10 and the decking material is currently located in California. Plaintiff Hureth resides in Rialto,
11 California. He purchased Trex decking material in California, and the decking material is
12 currently located in California. Thousands of other California residents also purchased and own
13 Trex decks that have experienced or will experience the Defect.

14 15. Application of California law with respect to Eric Ross, Bradley Hureth
15 and the California Class is neither arbitrary nor fundamentally unfair because California has
16 significant contacts and a significant aggregation of contacts that create a state interest in the
17 claims of the California Class.

18 16. All of the Nationwide Class members have a connection to Nevada by
19 reason of Trex manufacturing the defective product there. Application of Nevada law to their
20 claims is neither arbitrary nor fundamentally unfair because Nevada has significant contacts and a
21 significant aggregation of contacts that create a state interest in the claims of the Nationwide
22 Class.

23 17. A common nucleus of facts and legal issues dominates this litigation.
24 Although some class members may possess slightly differing remedies based on state statute or
25 common law, the claims asserted by the Plaintiffs and the California and Nationwide Class are
26 predicated on the same core facts and legal claims with substantially the same relevant elements.
27 To the extent distinct remedies may exist, they are local variants of a generally homogenous
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1 collection of causes of action which include consumer fraud, breach of express warranty and
2 unjust enrichment.

3 **VI. FACTUAL ALLEGATIONS**

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

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

11 20. Trex advertises its decking as “tak[ing] the natural beauty of wood, but
12 leav[ing] behind all the rotting and splintering,” and as “resistant to moisture.”

13 <<http://www.trex.com/decking/default.aspx>>

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

18 22. Trex decking products, however, experience the Defect shortly after
19 installation, and well before their warranted and expected useful life. The Defect is unsolvable, in
20 that there is no repair or cleaning that can correct the problems.

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

24 24. In its Quarterly Report of May 9, 2008, Trex disclosed to its shareholders
25 that “Trex product that exhibited surface defects and which the Company has determined was
26 produced at the Nevada manufacturing facility beginning in 2003.” Despite its knowledge of the
27 defect, Trex failed to notify its customers. Trex has also refused to provide adequate relief to
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1 Plaintiffs and thousands of others like them whose decks are prematurely failing due to the
2 Defect.

3 **VII. TOLLING**

4 25. Because the Defect is latent and not detectable until manifestation,
5 Plaintiffs and the Class members were not reasonably able to discover the Defect until after
6 purchase and installation, despite their exercise of due diligence.

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

10 27. Trex is estopped from relying on any statutes of limitation because of its
11 concealment of the Defect.

12 **VIII. CLASS ACTION ALLEGATIONS**

13 28. Plaintiffs Ross and Hureth bring this lawsuit as a class action on behalf of
14 themselves and all other similarly situated consumers as members of a proposed California Class
15 pursuant to California Code of Civil Procedure § 382, California Civil Code § 1781, and, to the
16 extent applicable, the analogous provisions of Federal Rule of Civil Procedure 23.

17 29. Plaintiffs Ross and Hureth also bring this lawsuit as a class action on
18 behalf of themselves and all others similarly situated consumers as members of a proposed
19 Nationwide Class pursuant to Rule 23 of the Nevada Rules of Civil Procedure, and to the extent
20 applicable, the analogous provisions of Federal Rule of Civil Procedure 23.

21 30. Based upon the allegations of this Complaint, this action satisfies the
22 ascertainability, numerosity, commonality, typicality, adequacy, predominance, and superiority
23 requirements for class certification in California Courts.

24 31. The California Class is defined as:

25
26 All persons and entities who reside in the State of California who
27 own decking or structures constructed of Trex decking material that
28 has exhibited delamination, including deterioration, flaking,
cracking, rotting and/or splintering, including the legal
representatives, heirs, successors in interest, transferees and assigns

1 of all such foregoing holders and/or owners, immediate and remote
2 (the "California Class").

3 32. The Nationwide Class is defined as:

4 All persons and entities who reside in the United States, other than
5 those residing in the State of California, who own decking or
6 structures constructed of Trex decking material that has exhibited
7 delamination, including deterioration, flaking, cracking, rotting
8 and/or splintering, including the legal representatives, heirs,
9 successors in interest, transferees and assigns of all such foregoing
10 holders and/or owners, immediate and remote (the "Nationwide
11 Class").

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

16 34. In addition, all claims for personal injury, wrongful death and emotional
17 distress are excluded from the California and the Nationwide Classes.

18 35. Plaintiffs reserve the right to re-define the Class prior to certification.

19 **Ascertainability & Numerosity**

20 36. Although the exact number of California Class members and Nationwide
21 Class members is uncertain and can only be ascertained through appropriate discovery, Plaintiffs
22 are informed and reasonably believe the number of affected structures constructed from Trex
23 products is in the tens of thousands, such that joinder is impracticable.

24 37. The California Class and the Nationwide Class are each composed of an
25 easily ascertainable, self-identifying set of individuals and entities who own decks or other
26 structures constructed with Trex material.

27 **Community of Interest**

28 38. 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.

1 Typicality

2 39. The claims of the representative Plaintiffs are typical of the claims of the
3 Class in that the representative Plaintiffs, like all Class members, own defective Trex decks, and
4 have been damaged by Trex's uniform misconduct by having decks that are deteriorating, flaking,
5 cracking, rotting and splintering.

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

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

12 Predominance of Common Issues

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

16 43. Whether Trex products are defective in that they experience flaking,
17 cracking, rotting and splintering and are therefore substantially certain to fail under ordinary
18 conditions well in advance of their expected useful life;

19 44. Whether Trex knew or should have known of the inherent design and/or
20 manufacturing defect in Trex products and concealed those facts;

21 45. Whether Trex misrepresented that its products had certain qualities,
22 characteristics or benefits;

23 46. Whether Trex represented that its products were of a particular standard,
24 quality or grade when they were not and/or when Trex knew or should have known that they are
25 of another standard, quality or grade;

26 47. Whether Trex advertised and/or offered for sale products that were
27 defective without clearly and unequivocally indicating that the products were defective and/or
28 with intent not to sell or lease them as advertised;

1 48. Whether the facts Trex misrepresented, concealed or failed to disclose were
2 material;

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

5 50. Whether Plaintiffs and the Class have suffered a loss as the result of Trex's
6 misrepresentation and/or concealment of material facts;

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

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

13 53. Whether Trex's conduct in marketing and selling its products constitutes a
14 violation of the Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;

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

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

18 56. 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 57. Whether Plaintiffs and the Class are entitled to compensatory, exemplary,
22 and statutory damages, and the amount of such damages; and

23 58. 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 59. Plaintiffs will fairly and adequately protect the interests of the California
3 Class and the Nationwide Class. They have retained counsel with substantial experience in
4 prosecuting consumer class actions, and specifically actions involving defective products.

5 60. 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 have any interests adverse to those of the Class.

8 61. 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. ("CLRA"))
21 (On Behalf of the California Class Only)

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

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

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

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

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

3 67. 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 68. 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, California 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 69. 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 70. 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 71. 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 72. 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.
28

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

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

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

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

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

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

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

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

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

27 any other relief the Court deems proper under Civ. Code Section
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1 1780(a)(5).

2 **SECOND CLAIM FOR RELIEF**

3 **(Violation of Bus. & Prof. Code §§ 17200 & 17500 (the "Unfair Business Practices Act"))**
4 **(On behalf of the California Class Only)**

5 79. Plaintiffs incorporate by reference the allegations contained in preceding
6 paragraphs of this Amended Complaint.

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

11 81. Trex committed an unlawful business act or practice in violation of the
12 Unfair Business Practices Act, Business and Professions code § 17200, *et seq.*, when it violated
13 the CLRA as alleged above.

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

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

27 84. Trex disseminated unfair, deceptive, untrue and/or misleading advertising
28 in violation of the Unfair Business Practices Act, Business & Professions Code §§ 17200 and

1 17500, *et seq.*, when it concealed and/or failed to disclose the true defective nature of the Trex
2 decking products in its advertising, marketing, and other broadly disseminated representations
3 containing statements that its products were of a certain quality or standard when they were not.

4 85. As a direct and proximate cause of Trex's violation of the Unfair Business
5 Practices Act, Plaintiffs and the members of the California Class have suffered or will suffer harm
6 in that they own Trex products that will suffer delamination and will be required to incur costs to
7 clean and replace the defective decking products.

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

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

18 **THIRD CLAIM FOR RELIEF**

19 **(Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*)**

20 **(On Behalf of the Nationwide Class)**

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

23 89. Trex knowingly made false representations as to the characteristics and/or
24 benefits of its products, among other false representations in the course of selling its products.

25 90. Trex represented that its products were of a particular standard, quality or
26 grade, when it knew or should have known that they were of another standard, quality and/or
27 grade.

28 91. Trex advertised its products with intent not to sell them as advertised.

1 92. The misrepresentations made by Trex were material, and were made
2 knowingly and intentionally, with intent to mislead.

3 93. Trex intentionally concealed and/or failed to disclose the true nature of the
4 design and/or manufacturing defect in its Trex products for the purpose of inducing Plaintiffs and
5 the Nationwide Class to act thereon, and Plaintiffs and the members of the Nationwide Class
6 justifiably relied to their detriment upon the truth and completeness of Trex's representations
7 about its products. This is evidenced by Plaintiffs' and the Nationwide Class members' purchase
8 of Trex's products.

9 94. As a direct and proximate cause of Trex's misconduct, Plaintiffs and the
10 members of the Nationwide Class have suffered actual damages in that (i) their decks and other
11 structures in their homes constructed with Trex are defectively designed and manufactured, and
12 (ii) their decks and other structures in their homes constructed with Trex have failed and will
13 continue to fail prematurely, requiring them to expend money to diagnose, repair, and/or replace
14 these structures.

15 95. As a result of Trex's misconduct, Plaintiffs and the Nationwide Class are
16 entitled to compensatory damages, attorneys' fees, costs, and interest thereon.

17 **FOURTH CLAIM FOR RELIEF**

18 **(Breach Of Express Warranty)**
19 **(On Behalf of the California and Nationwide Classes)**

20 96. Plaintiffs hereby incorporate by reference the allegations contained in the
21 preceding paragraphs of this Amended Complaint.

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

26 <<http://www.trex.com/warranty>>
27
28

1 98. Trex further expressly warranted that "Trex takes the natural beauty of
2 wood, but leaves behind all the rotting and splintering."

3 <<http://www.trex.com/decking/default.aspx>>

4 99. Trex also provided consumers with photographs, samples or models of
5 decking and fencing that did not show any signs of the Defect.

6 100. The warranties, affirmations, promises, assurances, descriptions and
7 models provided by Trex were the basis of the bargain for Plaintiffs and the Class members in
8 purchasing or acquiring the Trex products.

9 101. Trex has breached its express warranty to Plaintiffs and Class members in
10 that the Trex products were defective from the day they were sold and are substantially certain to
11 prematurely experience delamination and other manifestations of the Defect.

12 102. Trex has been put on notice of its breach of express warranties by Plaintiffs
13 and Class members through warranty claims previously made and through notice provided by
14 Plaintiffs and Class members prior to the filing of this Complaint.

15 103. As a direct result of the failure of the Trex products to perform as
16 warranted, Plaintiffs and the Class member have incurred and will continue to incur expenses to
17 maintain and replace Trex decking products.

18 104. Any contractual language contained in Trex's express warranty that
19 attempts to limit remedies is unconscionable, fails to conform to the requirements for limiting
20 remedies under applicable law, causes the warranties to fail of their essential purpose, and is,
21 thus, unconscionable and void.

22 105. Language in Trex's limited warranty that purports to exclude the exact
23 types of Defect that affects Plaintiffs' and proposed Class members' Trex products is unilaterally
24 imposed in a contract of adhesion that is typically provided after the sale, and is therefore
25 unconscionable and causes the entire warranty to fail of its essential purpose.

26 /

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Unjust Enrichment)**
3 **(On Behalf of the California and Nationwide Classes)**

4 106. Plaintiffs hereby incorporate by reference the allegations contained in the
5 preceding paragraphs of this Amended Complaint.

6 107. Trex received monies as a result of Plaintiffs' and Class members'
7 purchases of Trex products, and wrongfully accepted and retained these benefits to the detriment
8 of Plaintiffs and Class members.

9 108. Trex's enrichment at the expense of Plaintiffs and Class members was
10 unjust.

11 109. As a result of Trex's wrongful conduct, Plaintiffs and the members of the
12 Class are entitled to restitution from and institution of a constructive trust disgorging all profits,
13 benefits, and other compensation obtained by Trex, plus attorneys' fees, costs, and interest
14 thereon.

15 **IX. RELIEF REQUESTED**

16
17 Plaintiffs, on behalf of himself and all others similarly situated, request the Court enter
18 judgment against Trex, as follows:

19 110. An order certifying the proposed California and Nationwide Classes,
20 designating Plaintiffs as the named representatives of the California and Nationwide Classes, and
21 designating the undersigned as Class Counsel;

22 111. A declaration that Trex is financially responsible for notifying all Class
23 members of the problems with Trex material;

24 112. An order enjoining Trex from further deceptive advertising, marketing,
25 distribution, and sales practices with respect to Trex and to remove and replace Plaintiffs' and
26 Class members' decks with a suitable alternative decking material of Plaintiffs' and Class
27 members' choosing;
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113. An award to Plaintiffs and the Class of compensatory, exemplary, and statutory damages, including interest thereon, in an amount to be proven at trial;

114. A declaration that Trex must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of Trex material, or to make full restitution to Plaintiffs and the members of the Class;

115. An award of attorneys' fees and costs, as allowed by law;

116. An award of pre-judgment and post-judgment interest, as provided by law;

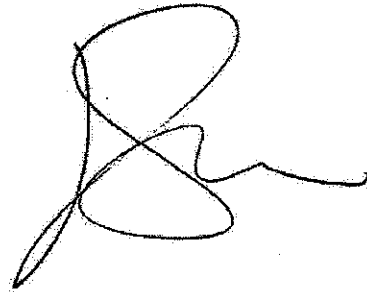
117. For leave to amend the Complaint to conform to the evidence produced at trial; and

118. Such other or further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

119. Plaintiffs demand a trial by jury of any and all issues in this action so triable.

DATED this 6th day of January, 2009.



Jonathan D. Selbin (State Bar No. 170222)
jselbin@lchb.com
Kristen E. Law (State Bar No. 222249)
klaw@lchb.com
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San Francisco, CA 94111-3336
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Michael McShane
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Charles L. LaDuca
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507 C Street, NE
Washington, D.C. 20002
Telephone: (202) 789-3960
Facsimile: (202) 789-1813

Attorneys for Plaintiffs and the Proposed Class

EXHIBIT A

1 Jonathan D. Selbin (State Bar No. 170222)
jsselbin@lehb.com
2 Kristen E. Law (State Bar No. 222249)
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
3 275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008

5 Attorney for Plaintiffs and the Proposed Class
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CRUZ

11 THOMAS MABREY, JR. and ERIC
ROSS, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 TREX COMPANY, a Delaware
corporation,

16 Defendant.
17

CASE NO.: _____

CLASS ACTION

VENUE AFFIDAVIT OF ERIC ROSS

18
19 I, ERIC ROSS, hereby declare and state as follows:

20 1. I am over the age of 18. The facts contained in this declaration are based
21 on my personal knowledge, and if called upon to do so, I could and would testify competently
22 hereto.

23 2. I am, and have at all times relevant to this action been, a resident of the
24 County of Santa Cruz, California.
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3. In or around June 2005, I purchased Trex Accents decking material in the approximate amount of \$2,926.84. I purchased this decking material from a Santa Cruz County store called Lumbermens. In or around January 2008, the Trex decking boards began displaying signs of delamination. This decking material is the subject of my claims against the Trex Company.

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

Dated: September 29 2008

By: 
ERIC ROSS

EXHIBIT B

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

JONATHAN D. SELBIN
PARTNER

ATTORNEYS AT LAW
780 THIRD AVENUE, 48TH FLOOR
NEW YORK, NEW YORK 10017-2024
TELEPHONE: (212) 355-9500
FACSIMILE: (212) 355-9592
mail@lchb.com
www.lchb.com

SAN FRANCISCO
WASHINGTON, D.C.
BEVERLY HILLS
NASHVILLE

September 30, 2008

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Andrew Ferrari
Chairman
Trex Company, Inc.
160 Exeter Drive
Winchester, VA 22603-8614

William Gupp
Senior Vice President/General Counsel
Trex Company, Inc.
160 Exeter Drive
Winchester, VA 22603-8614

Re: Notice and Demand Letter Re: Trex Decking Delamination and Moisture Defects

To Trex Company, Inc.:

Together with our co-counsel, Cohen, Milstein, Hausfeld & Toll, PLLC and Gary, Naegele & Theado, LLC, we represent Eric Ross, Thomas Mabrey, Jr. and Dianna Spalliero. Pursuant to the California Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.* (specifically, §§ 1782(a)(1) and (2)), Mr. Ross, Mr. Mabrey and Ms. Spalliero, on behalf of themselves and all other similarly situated consumers nationwide (collectively, the "Class"), through their undersigned counsel, hereby notify you that Trex Company, Inc. ("Trex") is alleged to have violated the CLRA by warranting, marketing, advertising, and selling Trex decking products that Trex knew were inherently defective because when installed and maintained in accordance with Trex's instructions, the decking products experience delamination and moisture-related defects (the "Defects") and are substantially certain to fail well before their warranted and expected useful life. We hereby demand that Trex correct, repair, replace or otherwise rectify the goods within 30 days from your receipt of this letter.

Mr. Ross, a resident of Santa Cruz, Santa Cruz County, California, purchased Trex decking in or around June 2005, for approximately \$2,926.84. The entire cost of his deck, which he installed himself, totaled approximately \$5,000. In or about January 2007, Mr. Ross's deck began to manifest the delamination Defect. An expert has inspected Mr. Ross's deck and confirmed that the delamination Defect has manifested.

Trex Company, Inc.
September 30, 2008
Page 2

Mr. Mabrey, a resident of Inverness, Cook County, Illinois, purchased Trex Escape decking material through a contractor in or around March 2005. He paid approximately \$13,600 for the decking materials and labor. Several months after his deck was installed, Mr. Mabrey's deck began to manifest the moisture-related Defect. An expert has inspected Mr. Mabrey's deck and has confirmed that the moisture-related Defect has manifested.

Ms. Spalliero is a resident of Chicago, Cook County, Illinois. She purchased Trex decking material through a contractor in approximately June 2007 for approximately \$12,000, inclusive of materials and labor. Roughly one year after her deck was installed, it started to manifest the moisture-related Defect. An expert has inspected Ms. Spalliero's deck and has confirmed that the moisture-related Defect has manifested.

The Defects have caused significant financial consequences for our clients and consumers throughout the country. Trex knew of the Defects, and concealed them from consumers and the public in a manner that violates the CLRA.

Trex's misrepresentations and its active concealment of and failure to disclose the Defects in warranting, marketing, advertising, and selling Trex decking constitute the following violations of the CLRA:

1. Trex has represented that its goods have characteristics, uses or benefits that they do not have (§ 1770(a)(5));
2. Trex has falsely represented that its goods are of a particular standard, quality or grade when they are of another (§ 1770(a)(7)); and
3. Trex has advertised its goods with the intent not to sell them as advertised (§ 1770(a)(9)).

Pursuant to Section 1782 of the CLRA, and based on the foregoing, we hereby demand that within thirty (30) days of receiving this letter, Trex agree to replace the Trex decking owned by Plaintiffs and others like them. Specifically, we demand that Trex: (1) replace free of charge all defective Trex decking owned by any member of the Class, including the cost of labor for replacement; or (2) agree to reimburse any and all Class members who own Trex decking with a manifest Defect for the full amount they paid for the Trex decking materials, plus the labor costs that were required to install the decking and that will be required to remove it.

Please be advised that should Trex refuse this demand, Mr. Ross, Mr. Mabrey and Ms. Spalliero will seek monetary damages for themselves and the Class, as well as an award of injunctive relief, restitution, punitive damages, attorneys' fees and costs, and any other relief a court deems proper.

If you have any questions regarding this notice and demand, feel free to contact me at (212) 355-9500.

Trex Company, Inc.
September 30, 2008
Page 3

Very truly yours,

A handwritten signature in black ink, appearing to be 'J. Selbin', written in a cursive style.

Jonathan D. Selbin

cc: Elizabeth A. Alexander
Richard S. Lewis
James J. Pizzirusso
Robert D. Gary
Jori Naegele
Patrick J. Perrone

09/30/2008 13:10 FAX 1415351

004/028

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

TREX COMPANY, a Delaware Corporation

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ERIC ROSS, THOMAS MABREY, JR. and DIANA SPALLIERO, on behalf of themselves and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SEP 30 2008

ALEX CALVO, CLERK
DEBORAH ROJAS
DEPUTY SANTA CRUZ COUNTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Santa Cruz, Main Courthouse
701 Ocean Street
Santa Cruz, California, 95060

CASE NUMBER:
(Número del Caso)

161553

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jonathan D. Selbin (State Bar No. 170222), Kristen E. Law (State Bar No. 222249) Tel. (415) 956-1000
Lieff, Cabraser, Heimann & Bernstein, LLP, 275 Battery Street, 30th Floor, San Francisco, CA 94111
DEBORAH ROJAS

DATE:
(Fecha)

SEP 30 2008

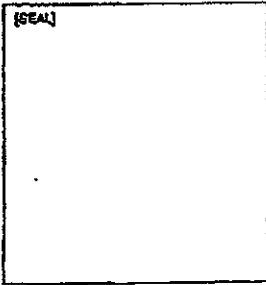
Clerk, by
(Secretaria)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

NOTICE TO THE PERSON SERVED: You are served



- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

| | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |
- by personal delivery on (date):

Page 1 of 1

09/30/2008 13:10 FAX 1415351

002/028

| | | |
|---|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jonathan D. Selton (State Bar No. 170222) Kristen E. Law (State Bar No. 222249) Lieff, Cabraser, Heimann & Bernstein, LLP 275 Battery Street, 30th Floor, San Francisco, CA 94111-3339 TELEPHONE NO.: (415) 956-1000 FAX NO.: (415) 956-1008 | | CM-010 FOR COURT USE ONLY |
| ATTORNEY FOR (Plaintiff) Plaintiffs and the Proposed Class | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Cruz STREET ADDRESS: 701 Ocean Street MAILING ADDRESS: 701 Ocean Street, Room 110 CITY AND ZIP CODE: Santa Cruz, CA 95060 BRANCH NAME: Main Courthouse | | |
| CASE NAME: Ross et al v. Trex Company | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | CASE NUMBER: <div style="font-size: 2em; font-family: cursive;">161553</div> JUDGE: DEPT.: |

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|--|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (16) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Designer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.405) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary, declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 30, 2008

Kristen E. Law

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rules.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial District of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 3 of 3
 Cal. Rules of Court, rules 2.102, 3.220, 3.400-3.405, 3.740
 Cal. Standards of Judicial Administration, sec. 3.10
 www.courtinfo.ca.gov

American LegalNet, Inc.
 www.FarmBiodiesel.com

FILED BY FAX

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PROOF OF SERVICE

(CCP § 1013A (3))

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is Four Embarcadero Center, Suite 1200, San Francisco, CA 94111.

On February 13, 2009, I served the foregoing document described as

NOTICE OF REMOVAL

on the following interested parties via electronic mail as follows

Jonathan D. Selbin, Esq.
Email: jselbin@lchb.com
Kristen E. Law, Esq
Email: klaw@lchb.com
Lieff, Cabraser, Heimann & Bernstein, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3336
Tel.: (415) 956-1000
Facsimile: (415) 956-1008

Elizabeth A. Alexander
Email: ealexander@lchb.com
Lieff, Cabraser, Heimann &
Bernstein, LLP
150 Fourth Avenue, North, Suite 1650
Nashville, TN 37219-2423
Tel.: (615) 313-9000
Facsimile: (615) 313-9965

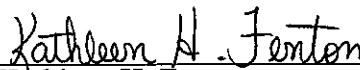
And on the following interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth below:

SEE ATTACHED

BY OVERNIGHT DELIVERY-- I caused personal delivery of the document(s) listed above, by placing the true copies in separate envelopes for each addressee, with the name and address of the person served shown on the envelope and by sealing the envelope and placing it for collection and delivery fees paid or provided for in accordance with ordinary business practices.

Executed on February 13, 2009 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Kathleen H. Fenton

ATTACHMENT TO PROOF OF SERVICE

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Jonathan D. Selbin, Esq.
Email: jselbin@lchb.com
Kristen E. Law, Esq
Email: klaw@lchb.com
Lieff, Cabraser, Heimann & Bernstein, LLP
275 Battery Street, 30th Floor
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Tel.: (415) 956-1000
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