

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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.: 5:09-cv-00670-PVT

**CLASS ACTION**

**AMENDED STIPULATION OF SETTLEMENT AND RELEASE**

**THIS AMENDED STIPULATION OF SETTLEMENT AND RELEASE** ("Settlement," "Stipulation," "Agreement," or "Settlement and Release") is made by and between the Plaintiffs in this case, for themselves and on behalf of the Plaintiff Settlement Class as hereinafter defined ("Settlement Class") and Defendant Trex Company, Inc. as hereinafter defined ("Trex" or "Defendant"). The Plaintiffs and Defendant, collectively, are referred to hereinafter as the "Parties."

Subject to Court approval as required by the Federal Rules of Civil Procedure, it is hereby stipulated and agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this Agreement, this Action (hereinafter "Action") shall be settled and

compromised upon the terms and conditions contained herein.

### **RECITALS**

**WHEREAS**, the Plaintiffs are parties to a Class Action entitled *Ross et. al v. Trex Company, Inc.*, Case No.: 5:09-cv-00670-PVT, pending in the United States District Court, Northern District of California (the "Action"), which alleges generally that Defendant has violated state and common law by negligently misrepresenting the characteristics of Trex decking and railing (the "Product"), by breaching warranties and/or by defrauding consumers in the manufacture and sale of the Product; and

**WHEREAS**, the Plaintiffs, while believing that the claims asserted in the Action have merit, have examined the benefits to be obtained under the terms of the proposed Settlement and Release, and have considered the risks associated with the continued prosecution and possible appeal of this litigation, and the likelihood of success on the merits of the Action, and believe that, in consideration of all the circumstances, the Settlement and Release embodied in this Stipulation is fair, reasonable, adequate and in the best interests of the Settlement Class; and

**WHEREAS**, Class Counsel performed substantial investigation regarding the claims asserted and the defenses that were or could have been asserted in the Action. Among other things, Class Counsel propounded informal discovery requests, analyzed over 1,000 pages of documents produced by Defendant, reviewed public documents, inspected the Product in various states, retained and consulted with experts, interviewed in-house personnel from Trex's Research and Development group, and researched the applicable law regarding the claims asserted and the potential defenses thereto; and

**WHEREAS**, Defendant, while denying wrongdoing of any kind whatsoever, and without admitting liability, nevertheless has agreed to enter into this Stipulation and the Settlement and

Release contained herein to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims which were asserted by Plaintiffs in the Amended Complaint filed in the Action.

**NOW, IN CONSIDERATION AND RECEIPT OF THE FOREGOING AND OTHER GOOD AND VALUABLE CONSIDERATION AS DESCRIBED HEREIN, IT IS HEREBY AGREED** that the Action be settled and compromised upon approval of the Court after hearing as provided herein, on the following terms and conditions:

**A. DEFINITIONS**

As used in this Agreement and the Exhibits annexed hereto, and in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

1. **“Action”** means the above-captioned action, *Ross et al. v. Trex Company, Inc.*, Case No. CV-161553, in the United States District Court, Northern District of California.
2. **“Agreement”** or **“Settlement”** or **“Settlement Agreement”** means this Settlement Agreement, including and incorporating herein by reference all Exhibits.
3. **“Attorneys’ Fees”** means the amount awarded by the Court as compensation for the services provided by Plaintiffs’ Class Counsel to date and into the future to effectuate this settlement, including reimbursement of costs and expenses (including expert witness fees and expenses), which is not to exceed \$1.25 million (excluding interest as described herein). The Attorneys’ Fees shall be paid in addition to,

and shall not be a reduction of, the compensation payable to Eligible Claimants pursuant to this Agreement. The amount of Attorneys' Fees approved by the court shall include simple interest computed at the rate of 0.125% per annum, commencing upon the date that this Agreement is signed by all counsel and continuing until the Effective Date of this Agreement.

4. **"Claim"** or **"Claims"** means a Claim for Surface Flaking of a Trex Product submitted to the Claims Office pursuant to the Claims Program established by this Agreement. If an Eligible Claimant suffers subsequent Surface Flaking that was not compensated by way of a prior Claim, the Claimant may submit another Claim Form within the Claims Period.

5. **"Claims Administrator"** shall mean a third-party agreed upon by the Parties and paid by the Defendant to receive and determine the validity of any appeal of a decision made by Trex with respect to a Claim made hereunder.

6. **"Claimant"** means anyone who submits a Claim in the Claims Program.

7. **"Claim Form"** means the document made available pursuant to the provisions of the Notice Plan that a Class Member must submit, subject to the provisions of this Stipulation, in order to obtain benefits from the Agreement.

8. **"Claims Office"** means the office or department established by Defendant for the purpose of implementing and managing the Claims Program established by this Agreement.

9. **"Claim Period"** or **"Claims Period"** means that period of time that expires at the end of the express limited warranty period applicable to each Claimant's Trex

Product. In the case of Prior Compensated Claims, however, the Claim Period or Claims Period for a supplemental labor payment related to the Prior Compensated Claims expires six (6) months from the last date that Notice is sent by Trex or published by the notice provider (as certified by Trex and the notice provider).

10. **"Claims Program"** means the procedure set forth in Section E for processing Claims.

11. **"Class Counsel"** includes Jonathan D. Selbin of Lieff, Cabraser, Heimann & Bernstein, LLP; Richard S. Lewis of Hausfeld, LLP; Robert D. Gary of Gary, Naegele & Theado, LLC; Kim Stephens of Tousley, Brain & Stephens, PLLC; Michael McShane of Audet & Partners, LLP; Charles L. LaDuca of Cuneo, Gilbert and LaDuca, LLP; and Robert K. Shelquist of Lockridge, Grindal, Nauden, P.L.L.P.

12. **"Class Member"** or **"Class Members"** means any Person who is included within the definition of the Settlement Class (and that Person's heirs, executors, administrators, successors, and assigns), and who does not validly and timely request exclusion from the Settlement Class, in accordance with the provisions of the Notice Plan.

13. **"Court"** means the United States District Court, Northern District of California.

14. **"Effective Date"** means that date described in Section L, Paragraph 2, herein.

15. **"Eligible Claimant"** means Settlement Class Members who submit their Claims, and substantially all information and materials required therein, within the time limits set out in this Agreement, who own a Trex Product that is experiencing Surface Flaking.

16. **"Fairness Hearing"** means the settlement approval hearing(s) to be

conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of this Agreement in accordance with Fed. R. Civ. P. 23(c).

17. **“Final Order and Judgment”** means the Order to be entered by the Court, in a form that is mutually agreeable to the Parties, approving this Agreement as fair, adequate and reasonable and in the best interests of the Settlement Class as a whole in accordance with Fed. R. Civ. P. 23(e), confirming the Settlement Class certification, and making such other findings and determinations as are necessary and appropriate to effectuate the terms of this Agreement.

18. **“Notice of Proposed Class Action Settlement”** means the Court-approved written notice to Settlement Class Members.

19. **“Notice Plan”** or **“Notice”** means the notice, plan, and schedule for providing classwide mailed and published notice of the settlement and certification of the Settlement Class, including the Notice of Proposed Class Action Settlement, all as more particularly described in a form to be mutually agreed upon by the parties.

20. **“Opt-Out Period”** means the 60-day period from the last date that Notice is sent by Trex or published by the notice provider (as certified by Trex and the notice provider).

21. **“Parties”** means Plaintiffs, the Settlement Class, and the Defendant.

22. **“Person”** means any individual, legal entity, association, or their successors or assigns.

23. **“Plaintiffs”** means the individuals acting as named representative Plaintiffs in this Action (i.e., Eric Ross and Bradley S. Hureth).

24. **“Preliminary Approval”** means the Court's provisional certification of the

Settlement Class, preliminary approval of this Agreement, and approval of the Notice of Proposed Class Action Settlement pursuant to Fed. R. Civ. P. 23(c)(2) and (e).

25. **"Prior Claim"** means a claim or request made by a Person to Defendant, for compensation because of Surface Flaking relating to Trex Product, and submitted to Defendant prior to the Effective Date of this Agreement.

26. **"Prior Compensated Claim"** means a Prior Claim as to which the Claimant has received Product and/or a monetary payment from the Defendant.

27. **"Released Claims"** means and includes, in addition to all claims set forth in the First Amended Class Action Complaint and Jury Demand by Plaintiffs, any and all causes of action, claims, liabilities, rights, matters, suits, proceedings, damages, equitable, legal and administrative relief, interest, attorneys' fees, expenses and costs, losses, penalties, punitive damages, exemplary damages, damages based on a multiplication of compensatory damages, demands, obligations, rights, liens, entitlements, indemnities, and contributions of any kind or nature whatsoever related to Surface Flaking of Trex Product, whether known, unknown or presently unknowable, suspected or unsuspected, latent or patent, asserted or unasserted, contingent or fixed, liquidated or unliquidated, unmatured or matured, and whether based on federal or state statute, regulation, ordinance, contract, common law, or any other source that has been, could have been, may be or could be directly or indirectly alleged, asserted, described, set forth or referred to now or in the future by Plaintiffs or the Settlement Class relating to Surface Flaking of Trex Product against the Released Parties either in this Action, or in any other court action or proceeding, or before any administrative body, tribunal or arbitration panel, on the basis of, connected with, arising out of, or in any way related to, in whole or in part, Defendant's

design, specification, manufacture, production, promotion, advertising, sale, representation, distribution, or installation of Trex Product (as it relates to Surface Flaking). The Released Claims include, without limitation, all causes of action related to Surface Flaking of Trex Product and related to the above without regard to whether such cause of action is or could be brought pursuant to common law, or any federal or state statute, regulation, or ordinance, including but not limited to federal or state statutes or regulations concerning unfair competition; unfair or deceptive methods of competition; unfair, deceptive, fraudulent, unconscionable, false or misleading conduct, acts, advertising or trade practices; consumer protection (including violations of the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act); or under the common law of any state as a claim for breach of contract, breach of express and implied warranties, reformation of warranty, breach of fiduciary duty, fraud, intentional misconduct, unjust enrichment, misrepresentation (negligent or otherwise), tort, negligence, breach of constructive trust, breach of the implied covenant of good faith and fair dealing, or any other common law or statutory basis. In addition, the Class Members shall be deemed to, and do hereby release and forever discharge, any other persons or entities from claims related to Surface Flaking of Trex Product for which the Defendant could be liable to any Class Members arising out of or based on the design, specification, manufacture, production, promotion, advertising, sale, representation, distribution, or installation of the Trex Product as it relates to Surface Flaking. The term "Released Claims" does not include the following: any claim for bodily injury, including claims for pain and suffering, emotional distress, mental anguish or similar damages associated with such bodily injury, or any claim for completely broken Trex Product (meaning that a single piece of Trex Product is broken completely through from top to bottom into two or more separate pieces), provided that the defined break is not caused by improper



installation of the Trex Product or caused by a Claimant or third party. Nor does the term "Released Claims" include any claim that is not related to "Surface Flaking" of the Trex Product as defined herein, including but not limited to spotting and/or discoloration, claims based on negligence, breach of contract, breach of express and implied warranties, fraud, negligent misrepresentation, violations of the Magnuson-Moss Warranty Act, intentional misconduct, statutory violations, and any other tortuous or other conduct by Defendant unrelated to Surface Flaking.

28. **"Released Parties"** or **"Released Party"** means Defendant, and any of its past or present officers, stockholders, directors, agents, employees, attorneys, affiliates, subsidiaries or divisions, and any parent companies, predecessors, successors, assigns, or legal representatives of the foregoing entities or persons, or any vendor, distributor, dealer, or contractor who sells and/or installs Trex Product. In addition, the Class Members shall be deemed to, and do hereby release and forever discharge, any other persons or entities from Claims for which the Defendant could be liable to any Class Members arising out of alleged Surface Flaking of Trex Product and whether based on the design, specification, manufacture, production, promotion, advertising, sale, representation, distribution, or installation of Trex Product.

29. **"Settlement and Release"** means the terms agreed to in this Stipulation.

30. **"Settlement Class"** means all Persons in the United States or its Territories who own or owned decks or other structures composed of Trex Product. Included within the Settlement Class are the legal representatives, heirs, successors in interest, transferees, and assignees of all such foregoing holders and/or owners, immediate and remote. Excluded from the Settlement Class are: Defendant and its subsidiaries and

affiliates; all Persons who, in accordance with the terms of this Agreement, properly execute and timely file during the Opt-Out Period a request for exclusion from the Settlement Class; all governmental entities; and the judge(s) to whom this case is assigned and any immediate family members thereof.

31. **“Surface Flaking”** means any visibly noticeable surface flaking, crumbling, delamination, and/or peeling away of the surface of the Trex Product caused by a design or manufacturing defect (as shown in the representative photographs attached to this Agreement as Exhibit A). Surface Flaking does not include surface damage caused by a Claimant or third party.

32. **“Trex”** or **“Defendant”** means Defendant Trex Company, Inc., and any of its past or present officers, stockholders, directors, agents, employees, attorneys, affiliates, subsidiaries or divisions, and any parent companies, predecessors, successors, assigns, or legal representatives of the foregoing entities or persons, or any vendor, distributor, dealer, or contractor.

33. **“Trex Product”** means any and all Trex decking or railing material manufactured in the Fernley, Nevada plant between January 1, 2002 and December 31, 2007.

## **B. CERTIFICATION OF SETTLEMENT CLASS**

1. The Parties to this Agreement agree that this Action shall be certified and proceed as a class action solely for purposes of settlement under Fed. R. Civ. P. 23(b)(3), consisting of all Settlement Class members, with the named Plaintiffs as the Settlement Class representatives and Class Counsel as counsel for the Settlement Class. This Agreement is for settlement purposes only, and neither the fact of, nor any provision

contained in, this Agreement or its Exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by Plaintiffs in this Action or in any other pending or subsequently filed action or proceeding of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or admission by Defendant of any claim or allegation made in this Action or in any action or proceeding. This Agreement shall, however, be admissible in any action or proceeding to enforce the terms of the Agreement.

2. Any certification of a conditional, preliminary or final Settlement Class pursuant to the terms of this Agreement shall not constitute, and shall not be construed as, an admission on the part of Defendant that this Action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to Fed. R. Civ. P. 23 or any similar state or federal class action statute or rule. This Agreement is without prejudice to the rights of Defendant to: (1) oppose final certification in this Action should this Settlement not be approved or implemented for any reason; (2) oppose certification in any other proposed or certified class action; or (3) use the certification of this Settlement Class to oppose certification of any other proposed class arising out of the issues and claims that are asserted herein.

3. In the event this Stipulation is terminated pursuant to its own terms, or a Final Approval of the Settlement for any reason does not occur, the Settlement Class defined herein shall cease to exist and the Action shall proceed as if no Settlement Class or Agreement had ever existed and Defendant, shall not have waived any and all rights it might have to oppose class certification, and to defend itself against the allegations of Plaintiffs' First Amended Complaint.

**C. SUBMISSION FOR PRELIMINARY APPROVAL**

1. As soon as possible after execution of this Agreement, the Parties shall jointly submit this Agreement, through their respective attorneys, to the Court for Preliminary Approval.

**D. RELIEF**

1. In exchange for the Release provided herein, Defendant shall provide the following relief:

a. Upon proper proof of claim (as set forth in Section E hereof), any Class Member experiencing Surface Flaking of a Trex Product will be provided an equivalent amount of replacement product or a cash equivalent at retail price for any decking board or railing manifesting any Surface Flaking, whether in whole or in part. If any part of a decking board manifests Surface Flaking, the Claimant will receive replacement product or a cash equivalent as provided herein. All decisions as to whether to provide an equivalent amount of replacement product or a cash equivalent will be made by Trex in its sole discretion. Trex's decision will be based on the amount of product to be replaced and the proximity between its distribution centers and the Settlement Class Member's property. If Trex provides replacement product for less than the whole Trex structure, the replacement product will be the same color option and same texture option as the originally installed Trex Product. The replacement product will carry the same limited warranty as the originally installed Trex Product (before replacement) and the limited warranty will remain in effect until the original limited warranty on the originally installed Trex Product expires. If at any time within the Claims Period more than 50 percent of the Trex decking boards (measured by linear feet) manifest any Surface

Flaking, Trex shall provide replacement product or a cash equivalent for all of the remaining decking boards in the structure (excluding those that already have been replaced).

b. Upon proper proof of claim (as set forth in Section E hereof), any Class Member experiencing Surface Flaking of a Trex Product who has not previously received some form of compensatory relief from Trex will receive a labor payment determined on a formulaic basis of 18 cents/linear foot of replaced Trex Product. (Number of pieces of Trex Product to be replaced multiplied by the length of Trex Product to be replaced multiplied by 18 cents (\$0.18)). This number shall endeavor to result in a payment of \$225 per class member with an average sized Trex deck.

c. Upon proper proof of claim (as set forth in Section E hereof), any Class Member who previously received some form of compensatory relief from Trex for Surface Flaking of Trex Product (Prior Compensated Claim), but received nothing (or less than \$225) to pay for labor-related costs, will receive a non-redundant labor payment determined on a formulaic basis of 18 cents/linear foot of replacement product up to (but not exceeding) \$225. Any Class Member who owns Trex Product manifesting Surface Flaking in boards that were not the subject of the Prior Compensated Claim, may make claims under Section D(1)(a) for such boards.

**E. CLAIMS PROCEDURE AND TIME FOR MAKING CLAIMS**

1. Defendant shall provide Claim Forms to potential Class Members upon request. The Notice Plan will set forth the method by which a potential Class Member may request a Claim Form, including both a toll-free number and web-address for downloading Claim Forms in a user-friendly format and for additional information about the Settlement. Defendant shall

provide a return address for Claim Forms.

2. If no Prior Claim has been made, Claim Forms must be received by the end of the express limited warranty period applicable to the Claimant's Trex Product. Claim Forms must be accompanied by proof of ownership of the property on which the Trex Product has been installed (e.g., a copy of a deed, mortgage bill, or utility bill), and a photograph of the Trex Product clearly showing the Surface Flaking for which a Claim is being made. The Claimant shall provide proof of ownership or installation of the Trex Product (e.g., purchase receipt or contractor receipt), if the Claimant still has possession of it. The Claim Form must be signed by a Class Member under penalty of perjury. The determination of whether a particular Claim Form is valid and whether the Trex Product shall be replaced shall be made by Trex in accordance with the terms of this Agreement and Trex shall provide Class Counsel with electronic notice of any denial within ten days and the reason for it. Upon request from Class Counsel, Trex shall provide all information in support of such a determination and will reconsider such determination upon request from Class Counsel, who may provide supplemental information to Trex to consider.

3. If a Prior Claim has been made and no action has been taken, Trex will resolve the Claim pursuant to the terms of this Agreement and the Claim will be handled in accordance with the procedures set forth in Paragraph 2 of this Section.

4. If a Prior Claim has been made and some form of compensatory relief given, Claim Forms seeking a supplemental labor payment must be received within six months of the last date Notice is sent by Trex or published by the notice provider (as certified by Trex and the notice provider). Claim Forms must be accompanied by proof of ownership of the property on which the Trex Product was installed (e.g., a copy of a deed, mortgage bill, or utility bill), and

proof that the Trex Product has been replaced (e.g., a purchase receipt or photograph of the current Trex Product). The Claimant shall provide proof of ownership or installation of the Trex Product (e.g., purchase receipt or contractor receipt), if the Claimant still has possession of it. With respect to Claim Forms for Prior Compensated Claims, Claimant must also submit a copy of the Trex offer letter identifying the type of relief previously given if the Claimant still has possession of it. The Claim Form must be signed by a Class Member under penalty of perjury. The determination of whether a particular Claim Form is valid and whether any additional relief shall be granted shall be made by Trex in accordance with the terms of this Agreement and Trex shall provide Class Counsel with electronic notice of any denial within ten days and the reason for it. Upon request from Class Counsel, Trex shall provide all information in support of such a determination and will reconsider such determination upon request from Class Counsel, who may provide supplemental information to Trex to consider.

5. Defendant shall be entitled to inspect any Trex Product that is the basis of a Claim at a reasonable time and at its own expense, upon prior notice to the Claimant, provided that the inspection must be completed within sixty (60) days – weather permitting – after providing notice to the claimant of Defendant’s decision to inspect the Trex Product.

6. In the event that any Class Member disagrees with the claim determination by Trex, that Class Member may appeal the Trex determination to a Claims Administrator within thirty-five (35) days of their receipt of the initial determination and Trex shall provide all materials regarding the Claim, including any photographs and the Claim Form, to the Claims Administrator and Class Counsel. If Class Counsel has asked Trex to reconsider Trex’s initial determination, however, the time for appeal does not run until Trex has made a final decision after reconsideration and notified Class Counsel and the Class Member in writing. If no appeal

is timely made, then the initial determination of the Claim shall be final. The Claims Administrator's determination of the validity and amount of any Claim shall be binding.

7. Nothing herein shall require Defendant to make any payments to any Eligible Claimant prior to the Effective Date of this Agreement.

8. Trex shall provide a six-month report, and then yearly reports for five years thereafter, to Class Counsel indicating the number of Claims received, the number of Claims approved, the number of Claims denied, the number of appeals taken, and the number of successful appeals.

#### **F. NOTICE AND COSTS OF NOTICE**

1. The Parties shall cause the Notice of Proposed Class Action Settlement describing this Agreement and the Fairness Hearing to be provided to the members of the Settlement Class as provided in this Section and in accordance with the Notice Plan or as otherwise approved by the Court and agreed to by the Parties.

2. All costs associated with providing Notice (including but not limited to the costs of printing, reproducing, and publishing notice to the potential Settlement Class members) shall be paid by Defendant. Defendant shall be solely responsible for making all arrangements necessary to effectuate the dissemination of Notice in accordance with the terms of the Preliminary Approval Order. Defendant shall, prior to the Final Settlement Hearing, file an affidavit with the Court confirming that Notice has been provided.

#### **G. REQUESTS FOR EXCLUSION AND RIGHTS OF INCLUSION**

1. A Settlement Class member may opt-out of the Settlement Class during the Opt-Out Period. To exercise the opt-out right set forth in this Section, the Settlement Class member must complete and return a written request for exclusion. Written requests for exclusion must be



signed under penalty of perjury, and include the potential Class Member's name, address, and telephone number, and expressly state the desire to be excluded from the Settlement Class. Such request must be (a) filed with the Clerk of the Court postmarked on or before the end of the Opt-Out Period, which shall be sixty (60) days from the last date that Notice is sent by Trex or published by the notice provider (as certified by Trex and the notice provider), and (b) sent by first-class mail to Defendant's counsel and Class Counsel postmarked on or before the end of the Opt-Out Period, which shall be sixty (60) days from the last date that Notice is sent by Trex or published by the notice provider (as certified by Trex and the notice provider).

2. Class Members who do not file a timely request for exclusion may file a notice of intent to object to the Settlement. The written notice of intent to object must be: (a) filed with the Clerk of the Court not later than twenty-one (21) days before the date set for the Final Settlement Hearing; and (b) sent by first-class mail, postmarked not later than twenty-one (21) days before the date set for the Final Settlement Hearing, to Defendant's counsel and Class Counsel. Any Class Member who does not so request to object waives the right to do so in the future, and shall be forever barred from making any objection to the Settlement. Any Notice of Intent to Object must contain: (a) a heading which refers to the Action; (b) a statement as to whether the objector intends to appear at the Final Settlement Hearing, either in person or through counsel, and, if through counsel, identify counsel by name, address and phone number; (c) a detailed statement of the specific legal and factual bases for each and every objection; (d) a list of any witnesses and photocopies of exhibits which the objector intends to introduce at the Final Settlement Hearing, if any; and (e) the objector's signature, verifying under penalty of perjury, that they are a member of the Settlement Class and the address of the relevant property.

3. Except for those Settlement Class members who have properly opted-out, all

Settlement Class members will be deemed Settlement Class members for all purposes under this Agreement. Any Settlement Class member who elects to opt-out of the Settlement Class pursuant to this Section shall not be entitled to relief under or be affected by this Agreement.

4. Any Class Member who does not file a timely written request for exclusion shall be bound by this Settlement and by all subsequent proceedings, orders and judgments in the Action.

5. Former Settlement Class Members who previously elected to opt-out of the Settlement Class may withdraw their opt-out requests only if they accept the benefits and terms of this Agreement and dismiss with prejudice any other pending action or proceeding against the Defendant, if any, arising from or related to Surface Flaking of their Trex Product.

#### **H. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT**

1. Each and every member of the Settlement Class who has not requested exclusion pursuant to Section G submits to the jurisdiction of the Court and will be bound by the terms of this Agreement (including, without limitation, any and all releases), conditioned upon the occurrence of the Effective Date of this Agreement, as well as any other Court orders including, without limitation, the Final Order and Judgment barring further litigation against the Defendant with respect to any of the Released Claims.

2. This Agreement and the Relief provided herein shall be the sole and exclusive remedy for any and all Claims of Settlement Class members against Defendant arising from or related to any Surface Flaking of their Trex Product. The Claims Administrator may provide only the compensatory relief provided for by this Agreement, and may not award punitive or multiple damages with respect to any claim governed by this Agreement. Upon the entry of the

Final Order and Judgment by the Court, each Settlement Class member who has not opted-out of the Settlement Class, shall be barred from initiating, asserting, or prosecuting any Released Claims against Defendant, except in accordance with the terms of this Agreement.

3. Settlement Class members agree to the dismissal of any action or proceeding pending against the Defendant to the extent any such action or proceeding seeks recovery for any Released Claims.

4. Upon the entry of the Final Order and Judgment, this Action and all claims and pending allegations by Plaintiffs will be dismissed with prejudice.

5. The Court shall retain exclusive and continuing jurisdiction over the Action, the Parties, and Settlement Class members, to interpret and enforce the terms, conditions, and obligations of this Agreement.

## **I. RELEASES**

1. Upon entry of the Final Order and Judgment, each Settlement Class member who has not timely opted-out of the Settlement Class, on behalf of himself and any Person claiming by or through him (the "Releasing Party" or "Releasing Parties"), regardless of whether any Settlement Class member executes and delivers a written release, shall be deemed to and does hereby release and forever discharge the Released Parties, of and from any and all Released Claims and related subrogation claims of the Releasing Party's subrogees or insurance carriers. Each Releasing Party, upon entry of the Final Order and Judgment, shall be deemed to and does hereby release and discharge each Released Party of and from any and all Released Claims. The Releasing Parties shall be deemed to and do hereby release and forever discharge any other persons or entities

from claims for which Defendant could be liable to the Releasing Parties, arising out of or related to Surface Flaking of Trex Product, whether based on the design, specification, manufacture, production, promotion, advertising, sale, representation, distribution, or installation of the Trex Product.

2. With respect to the Settlement Class members' Released Claims, the Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provisions under federal, state, or local laws to the extent any such provisions are applicable). Section 1542 of the California Civil Code states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

3. Plaintiffs and the Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts or law in addition to or different from those that they now know or believe to be true with respect to the matters released herein. Nevertheless, it is the intention of Plaintiffs and the Class Members in executing this Agreement to fully, finally, and forever settle and release all Released Claims which exist, or which hereafter exist whether or not previously or currently asserted in any action or proceeding, and to expressly waive any common law or statutory rule which would circumscribe the extent of this full Release, including any statute or rule giving the releasing party the right to complain of facts or claims relating to Surface Flaking of Trex Product that are unknown as of the date of any releases.

**J. ENFORCEMENT OF AGREEMENT**

1. In the event of a breach by the Defendant or a Settlement Class member under this Agreement, the Court may exercise all equitable powers over the Defendant or the Settlement Class member to enforce this Agreement and the Final Order and Judgment irrespective of the availability or adequacy of any remedy at law. Such powers include, among others, the power of specific performance, contempt and injunctive relief.

**K. ATTORNEYS' FEES AND COSTS FOR CLASS COUNSEL**

1. Attorneys' Fees and costs for Class Counsel will be subject to approval by the Court and will be paid by Defendant in addition to any relief granted to Plaintiffs and Settlement Class members for valid claims. No portion of the compensation made available to Plaintiffs or Settlement Class members pursuant to this Stipulation shall be reduced in any way to pay fees, costs, or expenses to Class Counsel. After negotiating relief to the Settlement Class, Defendant agreed that it would pay, subject to Court approval, a total award to Class Counsel of \$1.250 million inclusive of all fees, costs, and expenses of any kind, plus interest as described herein.

2. Class Counsel will not seek fees and costs in excess of this amount and Defendant agrees to pay and will not object to an award of this amount. In the event that fees and costs are granted in excess of \$1.250 million, Defendant may terminate this Agreement. In the event this Agreement is terminated pursuant to its own terms, or a Final Approval of the Settlement for any reason does not occur, the Settlement Class defined herein shall cease to exist and the Action shall proceed as if no Settlement Class or Agreement had ever existed and Defendant shall not have waived any and all rights it might have to oppose class certification, and to defend the allegations of the Amended Complaint.

3. Other than the amounts approved by the Court, and paid exclusively by Defendant

pursuant to this Agreement, Class Counsel waives, discharges and releases the Released Parties from any and all claims for attorneys' fees, by lien, statute, equity or otherwise, in connection with this Action.

4. The attorneys' fees and costs referred to herein (plus applicable interest as set forth in the Definition Section under "Attorneys' Fees") will be paid on the Effective Date of this Agreement.

**L. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL,  
CANCELLATION OR TERMINATION OF STIPULATION**

1. Upon entry of the Preliminary Approval Order, all proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Settlement and Release or to comply with or effectuate the terms of this Stipulation.

2. The "Effective Date" of this Agreement shall be that date upon which all of the following conditions and events have been met or have occurred:

- a. All parties have executed this Agreement;
- b. The Court has entered an order preliminarily approving this Agreement (the "Preliminary Approval Order"), without any material alterations;
- c. The Court has entered a final order approving this Agreement and releasing the Released Parties from the Released Claims and dismissing with prejudice, and without leave to amend, the Action and all claims asserted therein, except as to those potential Class Members who timely request exclusion (the "Final Approval Order"); and
- d. Unless the parties otherwise agree in writing to waive all or any portion of the following provisions: (i) the expiration (without the filing or noticing of an appeal) of the time to

appeal from the Final Approval Order; (ii) if an appeal is filed, the entry of a final dismissal order of any and all appeals from the Final Approval Order; (iii) affirmance on appeal of the Final Approval Order without material alteration; (iv) if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Approval Order, the time to petition for a writ of certiorari with respect to such ruling or decision has expired; or (v) if a petition for a writ of certiorari with respect to the Final Approval Order is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Approval Order without material alteration.

3. In the event that any of the conditions or events described above are not met or do not occur, this entire Agreement shall become null and void, except that the parties shall have the option to agree in writing to waive the event or condition and proceed with this Agreement, in which event the Effective Date shall be deemed to have occurred on the date of said written agreement.

#### **M. DENIAL OF LIABILITY**

1. Defendant maintains that it has consistently acted in accordance with governing laws at all times and continues to deny all of the material allegations in the Action. Defendant enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind on the part of Defendant.

2. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in

evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendant, except in any proceedings brought to enforce the Agreement.

**N. REPRESENTATIONS AND WARRANTIES**

1. The Defendant represents and warrants that: (i) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (ii) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Defendant; (iii) its signatories to the Agreement have full authority to sign on behalf of and to bind Defendant to the terms of the Agreement; and (iv) this Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid and binding obligation.

2. Class Counsel represents and warrants that they are authorized to execute this Agreement and to bind the Plaintiffs and Class Members on whose behalf they have executed this Agreement to all the terms and conditions of this Agreement.

**O. JUDGMENT**

1. After the Fairness Hearing, and subject to the Court's approval of the Agreement, a Final Order and Judgment shall be entered:

a. approving the Agreement as fair, reasonable and adequate and as having been entered into in good faith; directing the parties to comply with and implement the terms of the Agreement; and declaring the Agreement binding on all Settlement Class Members;

b. confirming that the Notice constitutes the most effective and



practicable notice to Settlement Class Members under the circumstances;

c. dismissing the Action on the merits and with prejudice, without costs to any party except as provided in this Agreement; and

d. retaining jurisdiction over the matters provided for in the Agreement.

**P. TERMINATION OF THE AGREEMENT**

1. The performance of this Agreement is expressly contingent upon the Court's issuance of the Final Order and Judgment. If the Court issues an Order disapproving the Agreement, Defendant may elect to terminate this Agreement within ninety (90) business days of such Order, rendering it as having no force or effect whatsoever, null and void, *ab initio*, and not admissible as evidence for any purpose in any pending or future litigation or other proceeding (in any jurisdiction) involving any of the Parties.

**Q. MISCELLANEOUS PROVISIONS**

1. Notification to Subsequent Purchasers: Each Settlement Class member is required to sign a statement in connection with the Claim Form certifying that any product and proceeds from the Claims Program will be applied to the repair or replacement of the Trex Product, and if such product and proceeds are not so applied, agreeing to advise any subsequent purchaser of the property on which the Trex Product exists that a Claim has been made, or to record such Claim in the appropriate title records of the property and to make such other appropriate disclosure as may be required by local or state laws regarding the purchase and sale of property. If an Eligible Claimant has not filed a claim or received benefits pursuant to the terms of this Agreement, then a subsequent owner (successor-in-interest or transferee) can file a

Claim during the remainder of the applicable Claim Period. Any Claimant who receives the benefits of this Settlement but who fails to perform the obligations in this Paragraph shall indemnify and hold harmless Defendant for all product replacement and payments made to subsequent purchasers of property covering the same Trex Product and acknowledge this obligation as part of the claims process.

2. Limitations of Payments: Anything in this Agreement to the contrary notwithstanding, under no circumstances shall Defendant be required to compensate more than one Person for Surface Flaking relating to the same Trex Product. In the event of multiple claims, Defendant will pay -- if compensation is due under this Agreement -- the first Eligible Claimant to file a Claim.

3. Other

a) Should any provision of this Agreement, or any of the Exhibits hereto, require judicial interpretation, the Parties agree that the Court or other adjudicating body shall not apply a presumption that the terms shall be more strictly construed against the party who prepared this Agreement, it being agreed that all Parties collectively participated in the negotiation and preparation of this Agreement and its Exhibits.

b) This Agreement shall be construed under and governed by the laws of the State of California, applied without regard to its choice of law provisions.

c) This Agreement, including all attached Exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements and understandings between the Parties. This Agreement may not be changed, modified, or amended except in writing signed by Class Counsel and Defendant's counsel and subject to Court approval.

Amendments and modifications may be made without additional notice to Settlement Class members unless such notice is required by the Court. The Parties contemplate that the Exhibits may be modified by subsequent agreement of Class Counsel and Defendant's Counsel prior to dissemination to the Settlement Class members.

d) Subject to the limitations and conditions expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Settlement Class, the Parties, and their representatives, heirs, successors, and assigns.

e) The headings of the Sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction. References to a "Section" includes reference to all paragraphs within the referenced Section.

f) Any notice, instruction, application for Court approval, application for Court order sought in connection with this Agreement, or other document to be given by any Party to any other Party shall be in writing and delivered by facsimile or U.S. Mail to:

FOR DEFENDANT:

Trex Company, Inc.  
160 Exeter Drive  
Winchester, VA 22603  
Att'n. Vice President and General Counsel  
Fax No.: 540-542-6887

FOR PLAINTIFFS:

James Pizzirusso  
HAUSFELD LLP  
1700 K Street NW  
Suite 650  
Washington, DC 20006  
Telephone: (202) 540-7200  
Fax No.: (202) 540-7201

Jonathan Selbin  
LIEFF, CABRASER,  
HEIMANN &  
BERNSTEIN, LLP  
275 Battery Street,

30<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 956-1000  
Fax No.: (415) 956-1008

g) The parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to effectuate this Agreement and the terms of the Agreement set forth herein, including taking all steps and efforts contemplated by this Agreement, and any other steps and efforts which may become necessary by order of the Court or otherwise.

h) Neither Defendant, nor Class Counsel, nor the Class Representatives will encourage any Person to request exclusion from membership in the Settlement Class, encourage any Person to object to the Agreement and/or discourage any Person from participating in the distribution of the proceeds of the Agreement.

i) Defendant agrees to provide each named Plaintiff or Class Representative (i.e., Eric Ross and Bradley S. Hureth) with a cash payment of \$7,500. This amount shall be in addition to the relief to which the Plaintiffs are entitled under this Agreement.

j) This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

k) This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned counsel, which may be done in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

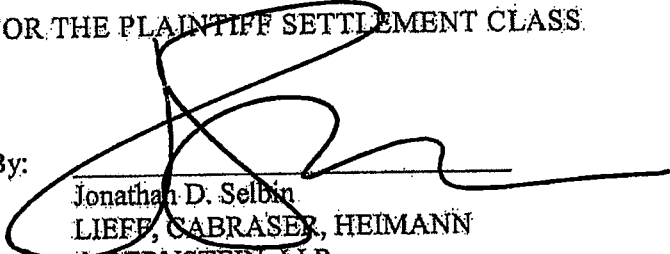
DATED this 15<sup>th</sup> day of July, 2009.

FOR THE DEFENDANT:

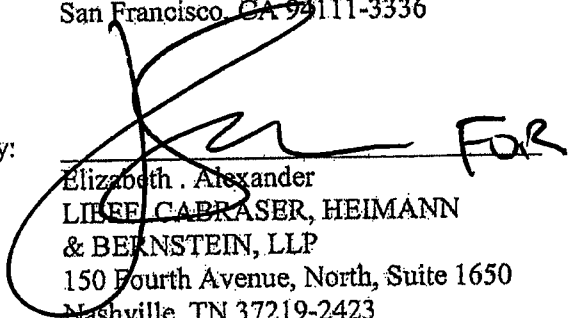
By: William R. Gupp  
William R. Gupp, Vice President, General Counsel + Secretary

FOR THE PLAINTIFF SETTLEMENT CLASS:


By:

  
Jonathan D. Selbin  
LIEFF, CABRASER, HEIMANN  
& BERNSTEIN, LLP  
275 Battery Street, 30<sup>th</sup> Floor  
San Francisco, CA 94111-3336

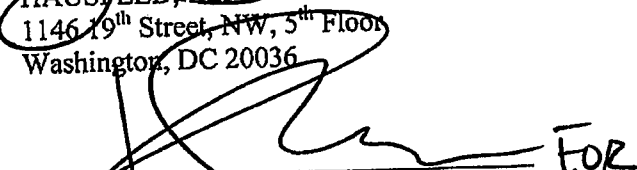
By:

 FOR  
Elizabeth Alexander  
LIEFF, CABRASER, HEIMANN  
& BERNSTEIN, LLP  
150 Fourth Avenue, North, Suite 1650  
Nashville, TN 37219-2423

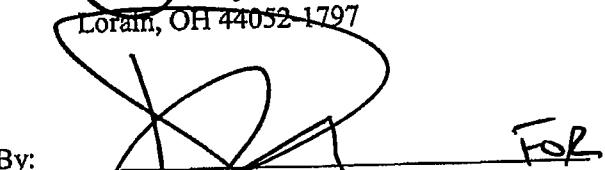
By:

 FOR  
Richard S. Lewis  
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By:

 FOR  
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466 Broadway  
Lorain, OH 44052-1797

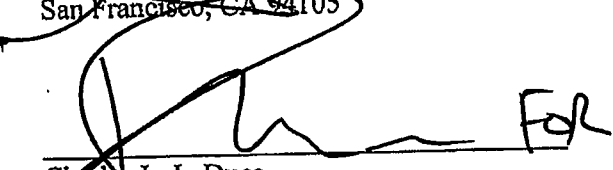
By:

 FOR  
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San Francisco, CA 94105

By:

 FOR  
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507 C Street, NE  
Washington, DC 20002