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12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF PLACER**
14

15 RICHARD WALLACE and TIM
16 McADAMS, on behalf of themselves, all
17 others similarly situated, and as private
attorneys general,,
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Plaintiffs,

vs.

20 MONIER LIFETILE LLC, a California
21 limited liability company; MONIER INC., a
California corporation, and DOES 1 through
50,
22
23

Defendants.
24 _____/

No. SCV 16410
CLASS ACTION

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION BASED ON THE
FOLLOWING COUNTS:**

1. Violations of Consumer Legal Remedies Act [California Civ. Code §1750, et seq.];
2. Violations of Unfair Competition Law [California Bus. Code §17200 et. seq.];
3. Breach of Express Warranty. [California Com. Code § 2725 et seq.];

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26 Plaintiffs RICHARD WALLACE and TIM McADAMS, on behalf of themselves, all
27 others similarly situated, and as private attorneys general, demand a jury trial in this class action
28 based on the following allegations:

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Nature of the Action

1. This is a consumer class and private attorney general action arising out of Defendants' unfair, deceptive, and misleading practices in failing to disclose to Plaintiffs and all class members that the color and exterior surface of Defendants' slurry-coated roofing tiles would not remain on those tiles for the expressly warranted life of the product. Each of the named Plaintiffs brings this action in his own right, on behalf of a class of all others who are similarly situated.

2. Specifically, Plaintiffs bring this action on behalf of themselves and all similarly-situated individuals and entities who own homes or other structures located in the State of California on which Monier® slurry-coated roofing tiles (collectively, "the Tiles") manufactured by Defendants have been installed. Plaintiffs and the persons and entities they represent in this action, as more specifically defined *infra*, shall be referred to collectively as "the Class." As such, Plaintiffs and the persons and entities they represent in this action are members of the Class.

3. The Class is composed of two separate **sub**-classes of claimants in this action. The first sub-class of claimants consists of "consumers" who are entitled to the rights afforded to them under the California Consumer Legal Remedies Act found at California Civil Code section 1750 *et seq.* (the "CLRA"). The second sub-class of claimants includes all of those in the first sub class *in addition* to all other persons and entities who are not otherwise recognized as a "consumer" under the CLRA and therefore are not entitled to the rights afforded "consumers" under that statute.

4. All of the claims asserted in this Second Amended Complaint arise out Defendants' failure to disclose to the Class that the Tiles are inherently defective such that their material composition causes the exterior surface of the product (including the glaze and slurry-coated color exterior) to deteriorate, degrade, and disperse from the Tiles well in advance of their warranted 50-year useful life. As a result, within the warranted life of the Tiles, the Tiles **lose the body** of their color; i.e., the exterior surface of the Tiles becomes friable, and the color

1 coating *together with its concrete body* divests from the extruded Tile such that Plaintiffs and
2 class members are left with plain concrete (non-colored) cement tiles.

3 5. As a result of Defendants' misconduct, as alleged more specifically in this
4 Second Amended Complaint, Plaintiffs and the class members have suffered actual damages in
5 that the Tiles on their homes and other structures have and will continue to prematurely fail,
6 therefore requiring them to expend time and money to prematurely replace their roofs years prior
7 to the expiration of the "useful life" of the Tiles. Plaintiffs and certain class members also seek
8 restitution from Defendants of the amounts Plaintiffs originally paid to Defendants to purchase
9 their inferior and misrepresented Tiles. But because of the relatively small amount of the typical
10 damages to each Plaintiff and class member, as well as the modest resources of most of the
11 homeowner class members, it is unlikely that most class members could afford to seek recovery
12 against Defendants on their own. As such, a class action is the only practical means for the Class
13 to receive restitution from Defendants as well as recover the damages they have suffered.

14 **The Parties**

15 6. Plaintiff RICHARD WALLACE is a citizen and resident of Placer County,
16 California, and he and his wife live in a single-family home located at 2980 Sage Lane in the city
17 of Lincoln. Mr. Wallace built his home in the late 1970s, and he purchased the Tiles directly
18 from Defendants or their predecessors in interest. He also purchased additional tiles,
19 manufactured by Defendant Monier, Inc., in 1994 for use on his garage.

20 7. Plaintiff TIM McADAMS is a citizen and resident of Placer County, California,
21 and he lives in a single-family home located in the city of Auburn. Mr. McAdams built his
22 home and purchased the Tiles directly from one of Defendants' Tile distributors in Sacramento.

23 8. Defendant MONIER, INC. is, and at all times mentioned in this Second
24 Amended Complaint was, a corporation organized and existing under the laws of the State of
25 California. Plaintiffs are informed and believe that this Defendant is, and at all times mentioned
26 in this Second Amended Complaint was, doing business in the State of California, County of
27 Placer. Monier, Inc. is the successor-in-interest to Monier-Raymond Company, Monier Roof
28 Tile, Inc. and Monier Company, and possibly other Doe companies or entities dating back to at

1 least 1971. On information and belief, Monier, Inc. continued to sell the same roofing tile
2 products under the same or similar names, through the same distribution methods as its
3 predecessor companies, which sold and marketed the products dating back to at least 1971.
4 Plaintiffs are also informed and believe that Defendant Monier, Inc., or its predecessors in
5 interest was/were involved in the design, engineering, development, manufacture, marketing, and
6 selling of the Tiles.

7 9. Defendant MONIERLIFETILE LLC is, and at all times mentioned in this
8 Complaint was, a limited liability company organized and existing under the laws of the State of
9 California. Plaintiffs are informed and believe that this Defendant is, and at certain times
10 mentioned in this Complaint was, doing business in the State of California, County of Placer.
11 Plaintiffs are also informed and believe that this Defendant, along with the other named
12 Defendant, was involved in the design, engineering, development, manufacture, marketing, and
13 selling of the Tiles. MONIERLIFETILE LLC is also MONIER, INC.'s agent for purposes of
14 administering the warranty programs of MONIER, INC. and its predecessor companies.

15 10. Plaintiffs are ignorant at this time of the true names and capacities of Defendants
16 identified in the caption of this Second Amended Complaint as DOE 1 through DOE 50.
17 Plaintiffs are suing these Defendants by such fictitious names pursuant to California Code of
18 Civil Procedure section 474 and will amend this Second Amended Complaint to show their true
19 names and capacities when the same have been ascertained. For the time being, Plaintiffs are
20 informed and believe that Defendants DOES 1 though 50 were and are business entities,
21 organizations, joint venturers, partnerships, associations, public entities, public agencies, and/or
22 individuals who participated in the design, engineering, development, manufacture, marketing,
23 and selling of the Tiles along with the other named Defendants.

24 11. Plaintiffs are further informed and believe that, at all times mentioned in this
25 Second Amended Complaint, Defendants, including DOES 1 through 50, were the agent, servant,
26 and/or employee of the other, and each was acting within the course and scope of their agency
27 and/or employment with respect to the acts complained of in this Second Amended Complaint.
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1 **Jurisdiction and Venue**

2 12. This Court has jurisdiction over this action pursuant to California Code of Civil
3 Procedure section 410.10. Plaintiffs seek damages and restitution on behalf of themselves and all
4 others similarly situated under common and statutory law of the State of California.

5 13. Venue is proper in this Court pursuant to Code of Civil Procedure sections 393,
6 395, and 395.5 as well as Civil Code section 1780(c), because (a) some of the described injuries
7 to property occurred in this county; (b) some of the acts and transactions described herein
8 occurred within this county; (c) Defendants are registered to do business in the State of California
9 and are doing business within this County, and (d) because Defendants did do business in this
10 county by manufacturing, selling, marketing, and/or warranting the Tiles at issue in this action.

11 **Class Action Allegations**

12 14. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all
13 other persons and entities similarly situated in the State of California pursuant to Code of Civil
14 Procedure section 382, Civil Code section 1781, and to the extent applicable, the analogous
15 provisions of Federal Rule of Civil Procedure 23. And as detailed below, this class action
16 satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
17 requirements of those statutes.

18 15. The first sub-class (the "CLRA" sub-class) is defined as follows: All individuals
19 who purchased Defendants' slurry-coated color roof tiles ("the Tiles") in California for
20 household use since January 1, 1971, and including all individuals and entities who replaced the
21 Tiles due to their failure to perform as alleged specifically in this Second Amended Complaint.
22 Excluded from the Class are Defendants, any entity in which Defendants have a controlling
23 interest, and Defendants' legal representatives, assigns and successors. Also excluded is the
24 judge or judges to whom this case is assigned and any member of the judge's immediate family.
25 Claims for personal injury are specifically excluded from this action.

26 16. The second sub-class (the "Ownership Class") is defined as follows:
27 All individuals and entities that own homes or other structures located in the State of California
28 on which Defendants' slurry-coated color roof tiles ("the Tiles") have been installed since

1 January 1, 1971, and including all individuals and entities who replaced the files due to their
2 failure to perform as alleged specifically in this Second Amended Complaint. Excluded from the
3 Class are Defendants, any entity in which Defendants have a controlling interest, and
4 Defendants' legal representatives, assigns and successors. Also excluded is the judge or judges
5 to whom this case is assigned and any member of the judge's immediate family. Claims for
6 personal injury are specifically excluded from this action.

7 17. Because the Class is comprised of hundreds if not thousands of homeowners and
8 entities throughout the State of California, joinder is impractical. As such, the disposition of the
9 claims of these Class members in this single class action will provide substantial benefits to all
10 parties and to the Court.

11 18. There is a well-defined community of interest among members of the Class.
12 The claims of the representative Plaintiffs are typical of the claims of the Class in that the
13 representative Plaintiffs, like all Class members, own homes or other structures on which
14 Defendants' problem Tiles have been installed. Further, the representative Plaintiffs, like all
15 Class members, have been damaged by Defendants' misconduct in that Plaintiffs will incur the
16 cost of repairing and/or replacing the problem Tiles on their homes. The factual bases of
17 Defendants' misconduct are common to all Class members and represent a common thread of
18 deceitful conduct resulting in injury to all Class members as alleged more specifically below.

19 19. There are numerous questions of law and fact that are common to Plaintiffs and
20 the other Class members and which predominate over any questions that may affect Class
21 members on an individual basis. The numerous common questions of law and fact include, but
22 are not limited to, the following:

- 23 a) Whether Defendants' Tiles are inherently defective such that their material
24 composition causes the exterior surface of the product (including the glaze
25 and slurry-coated color exterior) to deteriorate, degrade, disperse and lose
26 coating and color well in advance of their warranted 50-year useful life;
- 27 b) Whether Defendants knew, or should have known of the defective nature
28 of their Tiles;

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- c) Whether Defendants fraudulently concealed from and/or failed to disclose to the Class the true defective nature of the Tiles;
- d) Whether Defendants had a duty to the Class to disclose the true defective nature of the Tiles;
- e) Whether the facts relating to the Tiles that were concealed and/or otherwise not disclosed by Defendants to the Class are material facts;
- f) Whether as a result of Defendants' concealment and/or failure to disclose those material facts, the Class members acted to their detriment by purchasing the Tiles or homes or other structures on which the Tiles were installed;
- g) Whether Defendants knew, or should have known, that the Tiles are defective, would prematurely fail, and otherwise are not as warranted and represented by Defendants;
- h) Whether Defendants engaged in unfair competition and/or unfair deceptive acts and/or practices, in violation of California's Consumer Legal Remedies Act, (California Civil Code § 1750 *et seq.*), and Unfair Competition Law, Business and Professions Code § 17200 *et seq.*) when they failed to disclose and concealed the true nature of their Tiles;
- i) Whether, in doing the acts alleged herein, Defendants engaged in unfair competition and in a business practice or practices within the meaning of California Business and Professions Code § 17200;
- j) Whether such acts or practices were illegal, unfair, or fraudulent within the meaning of California Business and Professions Code § 17200;
- k) Whether, in doing the acts alleged herein, Defendants breached their express warranties with Plaintiffs and the Class;
- l) Whether Plaintiffs and the Class are entitled to compensatory damages, restitution, and the amounts thereof respectively;

1 m) Whether Defendants should be ordered to disgorge, for the benefit of the
2 Class, all or part of their ill-gotten profits received from the sale of
3 defective Tiles, and/or to make full restitution to Plaintiffs and the Class
4 members.

5 20. Plaintiffs will fairly and adequately represent and protect the interests of the
6 Class. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class
7 actions, including actions involving defective products and consumer warranties. Plaintiffs and
8 their counsel are committed to vigorously prosecuting this action on behalf of the Class, and
9 counsel has the financial resources to do so. Neither Plaintiff nor their counsel has any interests
10 adverse to those of the Class.

11 21. Plaintiffs and the Class members have all suffered damages as a result of
12 Defendants' unlawful and wrongful conduct. But, absent a class action, most Class members
13 likely would find the cost of litigating their individual claims to be prohibitive because of the
14 relatively small size of their respective claims; few class members could likely afford to seek
15 legal redress for Defendants' misconduct. Thus, absent a class action, Class members will
16 continue to incur damages and Defendants' misconduct will proceed unabated. As such, a class
17 action of this nature is superior to other available methods for the fair and efficient adjudication
18 of the subject controversy. The class treatment of common questions of law and fact is also
19 superior to multiple individual actions or piecemeal litigation in that it conserves the resources of
20 the courts and the litigants and promotes consistency and efficiency of adjudication.

21 **Fraudulent Concealment**

22 22. Defendants have fraudulently concealed the defective nature of the Tiles, and
23 the false nature of their representations concerning the Tiles, from Plaintiffs and the Class. Thus,
24 any statutes of limitation are equitably tolled because Plaintiffs did not know, and could not
25 reasonably have known, the true facts concerning the defects and false statements. On
26 information and belief, Plaintiff Wallace and other Class members, who contacted Defendants,
27 were told that re-glazing or re-coating of the Tiles would solve the problem. Such claims are also
28 made on Monierlifetile LLC's website. Defendants also represented in their advertising and

1 brochures that “normal” oxidation would result in some color change, without disclosing that
2 color loss might also be due to loss of the mass of the concrete and glazing.

3 23. The representative Plaintiffs only learned the true facts concerning the damages
4 they have and will suffer upon expert investigation conducted through counsel of the reasons for
5 the color loss in the Tiles installed in their roofs. The members of the Class were unaware of the
6 reasons for the loss of color, and many are still unaware of the cause of the color loss.

7 **Conspiracy and Agency Liability**

8 24. On information and belief, MONIER LIFETILE LLC has continued to sell and
9 advertise the Tiles in the same manner as MONIER, INC. and its predecessor companies.
10 MONIER LIFETILE LLC has employed the same advertising, technology, designs, and patents
11 to manufacture and sell the Tiles as did MONIER, INC. It has failed to correct and disclose the
12 inaccuracies, omissions and false representations contained in the advertising and brochures, and
13 other media as disseminated by MONIER, INC. and MONIER LIFETILE LLC. MONIER
14 LIFETILE LLC has also continued and administered the warranty programs begun under
15 MONIER, INC., and has enjoyed the goodwill and benefits of those associations. It is also
16 MONIER, INC.’s agent for purpose of administering the warranty programs. MONIER
17 LIFETILE LLC also has adopted and continued the falsehood that re-glazing or re-coating of the
18 Tiles will solve the problems caused by the design and manufacturing defects, as to Tiles sold by
19 either MONIER INC., its predecessors, or by MONIER LIFETILE LLC. MONIER LIFETILE
20 LLC has also held itself out as the successor to MONIER, INC. in its advertising of its corporate
21 history, and encouraged the Class and general public to believe that it is one and the same for
22 purposes of consumer confidence and reliance.

23 25. On information and belief, MONIER LIFETILE LLC and MONIER, INC. have
24 agreed and conspired to conceal and omit the true facts concerning the properties of the Tiles
25 from the general public and the Class, and to prevent the Class members from bringing claims
26 under the warranty programs.

27 26. The Notice of Claim is attached as “**Exhibit B**” hereto and incorporated by
28 reference. By this notice, Defendants were requested to make good on their warranties as to the

1 Tiles as to all affected persons. No response was made to this notice by either Defendant.
2 Plaintiffs timely served Defendants with notice of their violation of the Consumers Legal
3 Remedies Act by mail; however, Defendants have failed to respond. As such, Plaintiffs have
4 therefore complied with the 30-day notice period required by Civil Code section 1782(a).

5 27. Defendants, including their predecessors in interest, in various brochures and
6 warranties over the course of the Class Period, have made the following statements with respect
7 to their Tiles:

- 8 a) That the tiles “are free from manufacturing defects and will remain
9 structurally sound for a period of 50 years” (Monier-Raymond Company
10 Transferable Fifty-year Warranty);
- 11 b) That the tiles “are free from manufacturing defects for the life of the
12 building to which they are applied. . .” (MonierLifetile Limited Lifetime,
13 Fully Transferable, Non-Prorated Warranty);
- 14 c) The Tiles “actually becomes stronger and *more durable* with age” and
15 “saves you money by eliminating the need for expensive replacement” and
16 “this feature alone will create a faster, *more profitable* sale.” (Monier
17 Raymond Company, Monray Roof Tile, Homeowners Information,
18 “**Lasting Value**,” *emphasis added*; see also Monier Company, Facts You
19 Should Know About Monier Roof Tile, “**Classic Elegance**,” *emphasis*
20 *added*));
- 21 d) That “the high gloss appearance produced by this coating will *gradually*
22 *soften into a uniform satin finish*.” (Monier Raymond Company, Monray
23 Roof Tile, Homeowners Information, “**Appearance**,” *emphasis added*);
24 (Monier Company, Facts You Should Know About Monier Roof Tile,
25 “**Appearance**”)
- 26 e) “[Because of] the *rock hard glaze* applied to each Monray tile prevents the
27 penetration of fungus . . . steam cleaning or *other expensive treatments are*
28 *seldom needed* to rid your roof of these ugly stains.”(Monier Raymond

1 Company, Monray Roof Tile, Homeowners Information, “**Fungus**
2 **Removal**,” (*emphasis added*)

3 f) The tiles “do not ‘wear out’ as a result of normal exposure to the elements
4 as do most other roofing products . . .” (Monray Roof Tile by Monier
5 Company, Dear Monier, Could you please tell me . . ., **Frequently Asked**
6 **Questions**, No. 3 (*How long does a tile roof really last?*))

7 g) “Red tiles will remain red and brown tiles will remain brown, *et cetera*.
8 One thing that will probably happen, however, is a softening of the color
9 due to an accumulation of airborne particles and oxidation. This is the
10 same type of occurrence that takes place on any exposed colored surface
11 that cannot be polished or cleaned regularly as we do with our family car.”
12 (Monray Roof Tile by Monier Company, Dear Monier, Could you please
13 tell me . . ., **Frequently Asked Questions**, No. 8 (*Will the color last as*
14 *long as your tile?*)(*emphasis added*));

15 h) “Permanent color glaze . . . requires no resurfacing.” (Monray Roof Tile by
16 Monier Company, Dear Monier, Could you please tell me . . ., **Frequently**
17 **Asked Questions**, No. 9(2.) (*Why should I specify Monray Tiles over any*
18 *other brand of roof tiles?*)(*emphasis added*);

19 i) “High pressure extrusion process makes tile almost impervious to wear by
20 the elements.” (Monray Roof Tile by Monier Company, Dear Monier,
21 Could you please tell me . . ., **Frequently Asked Questions**, No. 9(3.)
22 (*Why should I specify Monray Tiles over any other brand of roof tiles?*));

23 j) “The extremely dense base and *virtually impenetrable color glaze* prevents
24 weight gain from moisture absorption.” (MONIER Monray Roof Tile
25 Roma ‘600’ Woodtone Series M-120 REV. 8-2/82; *also cited in M.100*
26 *Rev./6-82, emphasis added*));

27 k) “Because the tile will last the entire life of the building, a prospective new
28 owner will not have to worry about the additional cost and aggravation of

1 reroofing.” (Monier Fireproof Roof Tile, Reroof with Monier Tile.
2 Anything else is a compromise!, Here are some frequently asked Questions
3 on reroofing, (Q: “How will Monier Tile affect the resale value of my
4 home?”));

5 l) “Red tile remain red and brown tiles remain brown.” (Monier Fireproof
6 Roof Tile, Reroof with Monier Tile. Anything else is a compromise!, Here
7 are some frequently asked Questions on reroofing, (Q: “Will the color last
8 as long as the tile?”));

9 m) “**Improved Resale Value of House** – Always looks good, *permanent*
10 *color.*” (Monier Fireproof Roof Tile, Reroof with Monier Tile. Anything
11 else is a compromise!, Here are some frequently asked Questions on
12 reroofing, (Q: “Why should I choose Monier Tile?”)(*emphasis added*));

13 n) “After constant exposure to the elements, the color surface of your roof
14 will usually appear *somewhat lighter* than when initially installed.”
15 (Monier Lifetile, Owner Information, © 1999 MonierLifetile RR258-8/99
16 (and at www.monierlifetile.com) (*emphasis added*))

17 28. In each instance, the above statements (as well as other similar statements made
18 over the years) omitted to inform that the Tiles would degrade and lose the body of the color in a
19 period of time substantially less than the period covered by the fifty year warranty being offered.
20 By this omission, defendants falsely implied that the Tiles were durable and would not so
21 degrade and lose the body of their outer coatings so as to leave the appearance of bare, concrete-
22 colored tiles after a period substantially within the fifty year warranty period. Thus, the implicit
23 or express claims that the Tiles were free from manufacturing defects and would not lose the
24 body of their color for the period of the warranty constituted claims that the Tiles had properties
25 that they did not, in fact, possess in terms of durability and quality.

26 29. Defendants knew that the glaze was not permanent and knew that the glaze
27 would not last as long as the warranty or for as long as Defendants represented it would last.
28 With the technology available to Defendants to study and test the long term weatherability of

1 their “permanent” glaze and “long lasting” color, Plaintiffs are informed and believe that it was
2 manifestly unreasonable for any engineer to inform Defendants or any salesperson or marketing
3 person that the glaze was permanent and the color would last as long as the Tile.

4 30. During the Class Period, Defendants, and/or their predecessors, including their
5 Doe Corporation predecessors, each provided a fifty year warranty as to all Tiles that they sold.

6 **Count One**

7 **[California Civil Code Section 1750 *et seq.*]**

8 31. For purposes of this count, Plaintiffs incorporate by reference each and every
9 factual allegation contained in paragraphs 1 through 30 of this Second Amended Complaint.

10 32. This Count is brought on behalf of the named plaintiffs and the CLRA sub-class
11 only.

12 33. Defendants are “persons” as defined under Civil Code section 1761(c).

13 34. Defendants violated Civil Code sections 1770(a)(5) and (7) when they failed to
14 disclose that Defendants’ Tiles are inherently defective such that their material composition
15 causes the exterior surface of the product (including the glaze and slurry-coated color exterior) to
16 deteriorate, degrade, and to lose coating and color well in advance of their warranted 50-year
17 useful life.

18 35. In fact, the “permanent” glaze on Defendants’ slurry-coated color Tiles breaks
19 down and eventually is completely weathered away. Similarly, the color coating underneath the
20 glaze starts to weather and becomes friable to the touch. Once the color coating becomes friable,
21 it detaches from the tile leaving the “bare” concrete exposed. The “bare” concrete has no
22 aesthetic value, decreases the property value of the home, and leads to accelerated weathering
23 because normal free atmospheric carbon dioxide reacts with accessible compounds in the tiles in
24 a process known as carbonation. This carbonation causes reduced resistance to shock, brittleness,
25 and further weathering (erosion) of the tiles.

26 36. Simply put, the color is not fading on these Tiles, and the color is not made
27 lighter by the weathering elements. Rather, the color is removed from the Tiles -- the color loss
28 is not an adhesive failure but is a loss of mass of the concrete product. None of Defendants’

1 warranties exclude actual loss and breakdown of the product. None of Defendants' warranties
2 exclude a defectively applied slurry coating. And none of Defendants' warranties exclude loss of
3 the concrete tile from poor manufacturing and design.

4 37. As evidenced by the Tiles that have been in use for twenty years, the color on
5 these Tiles was never made to last for the life of the warranty. Contrary to Defendant's
6 representations, *Red tiles do not remain red, and brown tiles do not remain brown.* The
7 "permanent" glaze and color is not permanent at all. When the glaze and color is lost the tile
8 reveals "bare" concrete. Defendants knew that the glaze was not permanent and knew that the
9 glaze would not last as long as the warranty or for as long as Defendants represented it would
10 last.

11 38. Further, Defendants' own claims representatives have denied tile loss (not color
12 fading) claims made by Class members; i.e., the color is being lost because the concrete is
13 cohesively failing. These same representatives have uniformly told such claimants that their
14 remedy was to get their roof tiles painted by a tile coating or sealed by a roof sealant contractor.

15 39. As a result of the above material omissions, Defendants have committed the
16 following violations of section 1770:

- 17 a) Defendants have represented that their slurry-coated color roof Tiles have
18 characteristics or benefits which they do not have (section 1770(a) (5));
19 b) Defendants have falsely represented that their slurry-coated color roof Tiles
20 are of a particular standard, quality or grade (section 1770(a) (7)).

21 40. Defendants' deceptive practices, as alleged above, were specifically designed to,
22 and did, induce Plaintiffs and members of the Class to purchase the Tiles. Defendants engaged in
23 marketing efforts to reach the Class and persuade members to purchase and install the defective
24 Tiles manufactured by Defendants, or to purchase homes and other structures on which the
25 defective Tiles had been installed.

26 41. In fact, to this day, Defendants continue to engage in the above-noted unlawful
27 practices in violation of California's Consumer Legal Remedies Act because Defendants'
28

1 advertising and representations regarding their slurry-coated color Tiles continue to mislead and
2 deceive consumers.

3 42. Each of the named Plaintiffs has timely served Defendants with notice of their
4 violation of the Consumers Legal Remedies Act by mail; however, Defendants have failed to
5 respond. As such, Plaintiffs have therefore complied with the 30-day notice period required by
6 Civil Code section 1782(a).

7 43. As noted previously, venue is proper in this county pursuant to Civil Code
8 section 1780(c) because substantial portions of the transactions at issue took place in this county.
9 Defendants sold, distributed, marketed and warranted the defective Tiles in this county. Further,
10 Plaintiff Wallace and McAdams are residents of this county, and the acts complained of in this
11 Second Amended Complaint, specifically the distribution, marketing, sales and warranty services
12 relating to Defendants' Tiles, all occurred in this county. Attached to this Second Amended
13 Complaint as **Exhibit "A"** are declarations from Plaintiffs Wallace and McAdams attesting to
14 facts establishing proper venue in this county pursuant to Civil Code section 1780(c).

15 44. As a direct and proximate result of the above violations by Defendants,
16 Plaintiffs, on behalf of themselves, all others similarly situated in the CLRA sub-class, and as
17 private attorneys general, demand judgment against Defendants, jointly and severally, requiring
18 that Defendants (1) pay all costs required to repair or replace the defective slurry-coated color
19 roof Tiles on the properties of Plaintiffs and all individuals in California who purchased
20 Defendants' slurry-coated color roof Tiles since January 1, 1971; and (2) disgorge, for the benefit
21 of Plaintiffs and the Class, all of their ill-gotten profits received from the sale of defective slurry-
22 coated color roof tiles, and, as applicable, (3) restore the monies Class members have paid. The
23 Class also seeks punitive damages and their costs and attorneys fees pursuant to Civil Code
24 section 1780(d).

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Count Two

**For Violations of California’s Unfair Competition Law Against All Defendants
[California Business and Professions Code Section 17200 *et seq*]
On Behalf of All Class Members**

45. For purposes of this count, Plaintiffs incorporate by reference each and every factual allegation contained in paragraphs 1 through 44 of this Second Amended Complaint.

46. California Business and Professions Code section 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair deceptive, untrue or misleading advertising.”

47. Defendants’ violation of Civil Code section 1750 *et seq.* by their failure to disclose that their Tiles are inherently defective, as detailed above in Count One, constitutes unfair competition pursuant to section 17200.

48. Defendants’ deceptive practices were specifically designed to, and did, induce Plaintiffs and the other Class members to purchase the defective Tiles. Defendants engaged in marketing efforts in California directed to the Class in order to persuade them to purchase and install Defendants’ defective Tiles or to purchase homes and other structures on which the product had been installed.

49. To this day, Defendants have engaged and continue to engage in unfair competition by concealing the defective nature of the Tiles and by continuing to knowingly misrepresent to the Class that the Tiles possess qualities and characteristics that they do not have.

50. As a direct and proximate cause of Defendants’ unfair methods of competition and their unfair and deceptive acts and practices, Defendants have been unjustly enriched at the expense of the Class and should therefore be required to make restitution to Plaintiffs and the Class members pursuant to sections 17203 and 17204 of the Business and Professions Code. As such, Plaintiffs, on behalf of themselves, all others similarly situated, and as private attorneys general, demand injunctive relief against Defendants, jointly and severally, in the form of (1) disgorgement, for the benefit of Plaintiffs and the Class, of all Defendants’ ill-gotten profits received from the sale of their defective slurry-coated color roof Tiles and (2) restitution of the

1 monies Class members have paid to Defendants for the purchase of Defendants' defective Tiles,
2 and (3) a permanent injunction against the future use of misleading advertisements of the Tiles.

3
4 **Count Three**

5 **For Breach of Express Warranty Against All Defendants**
6 **[California Commercial Code section 2725 *et seq.*]**
7 **On Behalf of All Class Members**

8 51. For purposes of this count, Plaintiffs incorporate by reference each and every
9 factual allegation contained in paragraphs 1 through 50 of this Second Amended Complaint.

10 52. As noted previously, Defendants have expressly warranted their Tiles for a
11 period of fifty (50) years. These written warranties were received by the Class members, and are
12 transferable. But despite Plaintiffs' requests, Defendants have refused and continue to refuse to
13 honor the same.

14 53. As a direct and proximate result of Defendants' failure to honor their express
15 warranties, Plaintiffs and the Class member have been damaged. As such, Plaintiffs, on behalf
16 themselves, all others similarly situated, and as private attorneys general, demand judgment
17 against Defendants, requiring that Defendants pay all costs required to repair or replace the
18 defective slurry-coated color roof Tiles on the properties of Plaintiffs and all individuals on
19 whose properties located in California slurry-coated color roof Tiles were installed at any time
20 since January 1, 1971.

21 **Prayer**

22 Based on all of the above allegations, Plaintiffs, on behalf of themselves and all Class
23 members, and in their respective capacities as private attorneys general, demand a judgment on
24 their cause of action against all Defendants, jointly and severally, as follows:

- 25 1. Certification of the proposed sub-Classes;
- 26 2. A declaration that Defendants must disgorge, for the benefit of the sub-Classes, all
27 or part of their ill-gotten profits received from the sale of the defective Tiles, and a further
28 declaration that Defendants are required to make full restitution to Plaintiffs and the sub-Class
members;

1 3. An award of compensatory and punitive damages for the acts complained of in
2 this Second Amended Complaint;

3 4. An award of interest at the maximum legal rate on Plaintiffs and the Class's
4 compensatory damages;

5 5. An award of costs and attorneys fees as allowed by law and/or from a common
6 fund created for the benefit of the Class;

7 6. Any other equitable relief deemed necessary by the Court pursuant to the power
8 granted to it under California Business & Professions Code section 17203;

9 7. Such injunctive or other further relief as may be appropriate under the
10 circumstances.

11 Date: April __, 2005

BERDING & WEIL LLP

12
13
14 By: _____

Steven R. Weinmann
Attorneys for Plaintiffs

15
16 Date: April 6, 2005

LEVY, RAM & OLSON LLP

17
18
19 By: _____

Michael F. Ram
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