

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COUNTY OF HUDSON, New Jersey,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

FieldTurf USA Inc., FieldTurf Inc., and
FieldTurf Tarkett SAS,

Defendants.

No.

CLASS ACTION COMPLAINT

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PARTIES	5
A. Plaintiff	5
B. Defendants	6
III. JURISDICTION AND VENUE	7
IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS	8
A. FieldTurf sells synthetic turf fields and, in September 2004, entered an exclusive supply agreement for the sale and installation of Duraspine Turf fields.	8
B. FieldTurf marketed Duraspine Turf as durable, wear resistant, and cheaper in the long run because of its greater life expectancy.	11
C. FieldTurf early on knew the falsity of its representations about Duraspine Turf, but continued to make false representations to customers.	16
D. As customer complaints about Duraspine mounted in 2009 and 2010, FieldTurf denied its knowledge about the problem.	21
V. CLASS ALLEGATIONS	23
VI. TOLLING OF STATUTE OF LIMITATIONS	25
A. Discovery Rule Tolling	25
B. Fraudulent Concealment Tolling	27
C. Estoppel	27
VII. CAUSES OF ACTION	28
COUNT I VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT N.J. REV. STAT. § 56:8-1 <i>ET SEQ.</i>	28
COUNT II BREACH OF EXPRESS WARRANTY UNDER NEW JERSEY LAW N.J. REV. STAT. § 12A:2-313	30

COUNT III BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY UNDER NEW JERSEY LAW	31
COUNT IV COMMON LAW FRAUD UNDER NEW JERSEY LAW	32
COUNT V _FRAUDULENT CONCEALMENT UNDER NEW JERSEY LAW	33
COUNT VI _BREACH OF CONTRACT UNDER NEW JERSEY LAW	35
COUNT VII UNJUST ENRICHMENT UNDER NEW JERSEY LAW	36
COUNT VIII BREACH OF EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE GA CODE ANN. § 11-2-313.....	38
COUNT IX BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY GA CODE ANN. § 11-2-314.....	39
COUNT X BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE GA CODE ANN. § 11-2-315	41
COUNT XI UNJUST ENRICHMENT UNDER GEORGIA LAW	42
PRAYER FOR RELIEF	44
DEMAND FOR JURY TRIAL	45

Plaintiff County of Hudson, New Jersey, on behalf of itself and all others similarly situated, based upon personal knowledge and all other facts based upon investigation of counsel, files this class action complaint against FieldTurf USA, Inc. (FieldTurf USA), FieldTurf Inc. (FieldTurf Inc.), and FieldTurf Tarkett SAS (FieldTurf Tarkett) (collectively, FieldTurf).

I. INTRODUCTION

1. This case concerns FieldTurf's numerous broken promises made to their customers regarding an artificial turf product it launched in 2005, which it advertised as revolutionary and more durable than anything on the market. These were lies. This case seeks compensation for those who are the victims of FieldTurf's litany of broken promises.

2. Beginning in 2005, FieldTurf began marketing a high-end synthetic grass field system, sold under the names like "FieldTurf," "Duraspine," and "Prestige XM" (collectively, Duraspine Turf). With sweeping, deceptive, and misleading statements, FieldTurf lured municipalities, school districts, universities, and athletic organizations into contracting for purchase and installation of Duraspine Turf, installations which were often financed with scarce taxpayer dollars. From 2005 to 2012, FieldTurf sold and installed 1450 Duraspine Turf fields in nearly all 50 states, earning at least \$570 million in revenue.

3. Marketed as a "breakthrough in technology," and the best that money could buy, FieldTurf represented that the "quality, safety and performance" of its Duraspine Turf would ensure success for athletes, programs, facilities, and finances. The Duraspine Turf's "unmatched memory" and "unmatched durability" would prevent matting, more closely mimic a natural grass playing surface, feature increased resistance to wear from usage and UV radiation, and in sum, "last longer" with a useful life nearly twice FieldTurf's existing synthetic surface, slit film. FieldTurf assured that none of these representations were mere "marketing spin."

4. In fact, these representations were pure lies. Rather than lasting 10 or more years, with blades of turf uniformly “standing up” like natural grass as promised, many Duraspine Turf surfaces fell over or simply crumbled to pieces. As one New Jersey high school football coach remarked, “You grab it and it rips. It rips like grass. And it was really bad last year, and we were almost talking about canceling games.”

5. As early as October 2006 (and likely earlier), FieldTurf knew that its Duraspine Turf deteriorated quickly and that the numerous representations it made concerning Duraspine Turf’s durability were totally false. Duraspine Turf easily frayed, causing the turf to wilt, break, and shear off. In December 2006, a FieldTurf employee wrote in an email, copying the company’s CEO, that: “We are seeing fields showing splitting after under a year of play and have already had to replace one full-size field due to yarn failure after only a few months of installation!” In a November 2007 email, the same FieldTurf employee wrote that the company’s “claims made regarding the Duraspine . . . are ridiculous. Everyday we are putting stuff out there that can’t and won’t live up to the marketing spin.”

6. Nevertheless, FieldTurf continued its series of misrepresentations to potential and existing customers for at least another half-decade. For several additional years after acquiring clear evidence that its Duraspine Turf products were totally defective, FieldTurf marketed and sold defective Duraspine Turf to any and every customer who would buy it, even entering into exclusive supply agreements with the manufacturer of the defective Duraspine surface, Mattex Leisure Industries (“Mattex”) and its successor TenCate Thiolon Middle East LLC (“TenCate”), that required the ongoing sales.

7. As a “full-blown crisis” of “massive field failures” came to light in 2009 and 2010 (following peak sales in 2008, with 419 installations worth an estimated \$168 million), FieldTurf

denied knowledge of any problems. During the entire relevant period, and even thereafter, FieldTurf engaged in a systematic class-wide campaign to conceal Duraspine Turf's numerous defects. It tried minimizing the problem, passing it off as an inconsistent issue resulting from intense UV radiation in states like Texas and California, despite evidence of widespread failures *nationwide*. It also sought to blame the victims of its lies, by claiming that any problems experienced by FieldTurf's customers with Duraspine Turf were due to poor field maintenance by customers. And in at least once instance, FieldTurf delayed processing a warranty claim and then denied the claim upon expiration of the eight-year warranty period. And, in response to customer complaints, FieldTurf would tell its customers that whatever "anomalies" they were experiencing, would get better with time.

8. Moreover, despite longstanding knowledge of its defective product, company officials declined to notify customers. The "problem didn't affect every field," or so FieldTurf reasoned, and the company could not be "certain how many fields were affected because they [relied only] on complaints" – even though 264 customers had contacted FieldTurf with complaints by 2014. And as these complaints mounted and piecemeal litigation commenced, FieldTurf stood by its representations and "strongly rejected any allegations of fraud"

9. The scheme was finally exposed in a December 2016 exposé by NJ Advance Media, which published findings from a lengthy, in-depth investigation into widespread failures of the Duraspine Turf in New Jersey and elsewhere.¹ As part of its investigation, NJ Advance

¹ See *The 100-Yard Deception*, NJ Advance Media, <http://fieldturf.nj.com/> (last visited January 5, 2017). As part of the six month investigation, NJ Advance Media filed 40 public records requests, obtained more than 5,000 pages of company records, emails, court filings and testimony, and also interviewed coaches, officials, and current and former FieldTurf employees.

Media commissioned the University of Michigan's Breaker Space Lab to test turf fibers from three Duraspine fields in New Jersey. The tests confirmed the strength of the turf to be well below industry standards, and FieldTurf's own standards. The investigation also concluded:

- FieldTurf knew its Duraspine Turf fields were defective. For most of the time they sold the fields, which cost at least \$300,000 to \$500,000 each, executives were aware the turf was deteriorating faster than expected and might not last a decade or more as promised.
- They misled their customers. Despite candid, internal email discussions about their overblown sales pitches, executives never changed their marketing campaign for Duraspine Turf fields.
- They tried to cover up their lies. A lawyer warned that some of those internal emails could be damaging in a lawsuit, and an executive sought to delete them. An IT consultant refused, calling it a "possible crime."
- They have and continue to keep quiet about their lies. From the time fields began to fail in 2006 until today, executives have never told most customers about Duraspine Turf's problems or how to identify signs it was prematurely falling apart.
- They stonewalled their customers who did report issues. Some customers who did report problems said FieldTurf officials slow-footed warranty claims and told them the deterioration was normal, or that their fields needed more maintenance, or the problems would get better. Further, to this day, in testimony before governmental bodies, and in publicly released statements, FieldTurf continues to publicly deny there was a widespread defect with its Duraspine Turf products.

10. And yet, not once did FieldTurf change its sales pitch before discontinuing sales of Duraspine Turf in or around 2012. Its marketing director testified in a 2012 deposition that the representations remained unchanged, notwithstanding the mounting evidence and customer complaints, because he "wasn't asked to change them." Nevertheless, FieldTurf claims that it

“has been forthcoming as possible with our customers when dealing with issues associated with Duraspine, given our evolving understanding of the issue”²

11. It is time for FieldTurf to be held accountable for its intentional and egregious conduct.

II. PARTIES

A. Plaintiff

12. Plaintiff the County of Hudson, New Jersey (Plaintiff) is a political subdivision of the State of New Jersey. Plaintiff owns and operates the following five athletic fields throughout the County (collectively the “Fields”):

(a) The baseball and soccer field at Laurel Hill Park in Secaucus, New Jersey (“Laurel Hill”).

(b) Field 10 located in Lincoln Park in Jersey City, New Jersey (“Field 10”).

(c) Field 11 located in Lincoln Park in Jersey City, New Jersey (“Field 11”).

(d) Field 2 located in Washington Park in Jersey City, New Jersey (“Field 2”).

(e) Field 3 located in Washington Park in Jersey City, New Jersey (“Field 3”).

13. Each of the Fields has a Duraspine Turf artificial surface. In 2007, Plaintiff purchased FieldTurf Duraspine Turf fields from FieldTurf for Fields 10 and 11. Specifically, Plaintiff purchased FieldTurf’s Prestige XM 60 Duraspine Turf at a cost of over \$900,000 for both fields. The Duraspine Turf in Fields 10 and 11 was installed between 2007 and 2008.

² *Statement Attributable to Eric Daliere, CEO and President of Tarkett Sports*, <https://assets.documentcloud.org/documents/3229795/FTResponsesCompilation.pdf> (last visited January 5, 2017).

14. In 2007, Plaintiff also purchased a FieldTurf Duraspine Turf field from FieldTurf for Laurel Hill. Specifically, Plaintiff purchased FieldTurf's Prestige XM 60 Duraspine Turf at a cost of over \$500,000. The Duraspine Turf in Laurel Hill was installed between 2007 and 2009.

15. In 2009, Plaintiff purchased a FieldTurf Duraspine Turf field from FieldTurf for Fields 2 and 3. Specifically, Plaintiff purchased FieldTurf's FTOM-2 (Pro Series 2 Monofilament) at a cost of over \$250,000. The Duraspine Turf in Fields 2 and 3 was installed between 2009 and 2010.

16. On October 15, 2015, and possibly earlier, Plaintiff notified FieldTurf by e-mail that it had received complaints about the condition of the playing surface on Fields 2 and 3. Plaintiff explained that upon inspection its maintenance crews were "stunned at how rapidly the fibers had deteriorated" and that "[t]he turf in some areas were worn right down to the fabric backing. No fiber at all."

17. Plaintiff has subsequently determined that the FieldTurf synthetic turf fields at Laurel Hill and Fields 10 and 11 have similar excessive deterioration.

18. The FieldTurf synthetic turf fields at Fields 2 and 3 were removed and replaced in 2016.

B. Defendants

19. Defendant FieldTurf USA Inc. is a Florida corporation with its principal place of business located at 75 North Industrial Blvd., N.E., Calhoun, Georgia 30701. FieldTurf USA marketed, manufactured, sold, and installed the defective Duraspine Turf products throughout the United States.

20. Defendant FieldTurf, Inc. is a Canadian corporation with its principal place of business located at 8088 Montview Road, Montreal, Quebec, H4P 2L7. Upon information and

belief, FieldTurf Inc., also manufactured and sold the defective Duraspine Turf products or otherwise conducts business in the United States, including New Jersey.

21. Defendant FieldTurf Tarkett SAS is a French corporation with its principal place of business located at 2 Rue de l'Egalite, 92748 Nanterre Cedex, France. FieldTurf Tarkett is the parent corporation to FieldTurf USA. FieldTurf's website describes itself as a "Tarkett Company," with Tarkett describing itself as:

[A] global leader in innovative and sustainable solutions for flooring and sports surfaces. With a wide range of products including vinyl, linoleum, carpet, rubber, wood & laminate, synthetic turf and athletics track, the Group serves customers in more than 100 countries worldwide. With 11,000 employees and 30 production sites, Tarkett sells 1.3 million square meters of flooring every day, for hospitals, schools, housing, hotels, offices, stores and sports fields. Committed to sustainable development, the Group has implemented an eco-innovation strategy and promotes circular economy. Tarkett net sales of 2.5 billion euros in 2013 are balanced between Europe, North America and new economies.³

22. Defendant FieldTurf Tarkett SAS was actively involved in concealing the defect from United States consumers.

III. JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and (2), and Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.00.

24. The Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), as this is a class action in which Plaintiff, a class member, is a citizen of a different state than each Defendant, the aggregate sum of class damages exceeds \$5,000,000.00, and the proposed class exceeds 100 members.

³ <http://www.fieldturf.com/en/artificial-turf/about-fieldturf>.

25. The Court has personal jurisdiction over FieldTurf USA, FieldTurf Inc., and FieldTurf Tarkett because each is a corporation authorized to conduct business in New Jersey, does business in New Jersey, or did sufficient business in New Jersey, has sufficient minimum contacts with New Jersey, or otherwise intentionally availed themselves of the New Jersey consumer market through the promotion, marketing, and sale of defective Duraspine Turf products. This purposeful availment renders permissible the exercise of personal jurisdiction by this Court over FieldTurf and its affiliated or related entities under traditional notions of fair play and substantial justice.

26. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because FieldTurf transacts business and may be found in this District. Venue is also proper in this District because a substantial portion of the allegations complained of herein, including Plaintiff's transaction of business with Defendants, occurred in the District of New Jersey.

IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. FieldTurf sells synthetic turf fields and, in September 2004, entered an exclusive supply agreement for the sale and installation of Duraspine Turf fields.

27. FieldTurf markets, manufactures, sells, and installs synthetic surfaces for athletic fields in New Jersey and the United States. Synthetic turf is an alternative to natural grass, with expected benefits of greater durability and lower maintenance costs (among others). In many instances, turf fields may be used year-round in a wide range of weather conditions, and also may be utilized for extended periods of playing time without downtime for recovery between athletic contests. Moreover, turf eliminates the upkeep required for natural grass, such as weed removal, watering, fertilizing, and the like.

28. In 1988, FieldTurf introduced its first synthetic grass system for tennis courts and a synthetic grass surface used to minimize wear and tear around golf practice tees. The company then began developing synthetic turf surfaces for other sports installations including soccer, lacrosse, football and baseball. FieldTurf focuses on perfecting a sports field system with a sand and rubber infill, to provide superior athlete safety, high performance and extreme durability. According to FieldTurf, the infilled artificial turf industry was born when, in 1994, FieldTurf installed its first full size soccer field.⁴

29. In 1995, FieldTurf began marketing the eponymous “FieldTurf,” a patented artificial grass athletic surface. This initial version of FieldTurf utilized a technology called “slit film.” Slit film was a sheet of plastic cut into individual blades, which were then bunched and sewn together into a carpet backing and infilled with sand and rubber. Slit film was softer and more shock absorbent than its chief competition, AstroTurf, which was an abrasive carpet with little padding. In 1999, FieldTurf negotiated a deal with the University of Nebraska, leading to skyrocketing sales.

30. In November 2003, then FieldTurf CEO John Gilman attended a trade show in Cologne, Germany, where he met Jeroen van Balen of Mattex, who demonstrated a new artificial grass fiber, monofilament, which Mattex called “Evolution.” This monofilament surface was more durable than the slit film used in FieldTurf’s existing products, with an appearance and function that more closely mimicked natural grass. The new monofilament surface, later marketed as Duraspine by FieldTurf, was made by pushing plastic fibers through an extruder, making individual strands like spaghetti with a central spine down the middle. The fibers were

⁴ <http://www.fieldturf.com/en/artificial-turf/about-fieldturf>.

then bundled and tufted to carpet, locked into place with a urethane coating, and infilled with sand and rubber.

31. Gilman saw a golden opportunity in Duraspine. Around the same time, in the early 2000s, FieldTurf executives had become concerned that they may fall behind competitors. So, believing Duraspine could again revolutionize the artificial turf industry and cement FieldTurf as the industry leader, FieldTurf entered into an exclusive agreement with Mattex to sell the product in September 2005, following a period of testing and negotiation between the two companies.

32. In so doing, FieldTurf bet its future on this ostensibly state-of-the-art surface. Due to the exclusive access agreement and Duraspine's advanced qualities (which additionally included resistance to wear and UV radiation), FieldTurf would sell Duraspine Turf fields at a premium price. And it also stood to benefit from purchasing Duraspine at lower wholesale cost than slit film, thus producing substantial benefits for the company's bottom line.

33. Initial testing was not uniformly positive, however. Although FieldTurf and Mattex testing in 2004 and 2005 suggested Duraspine Turf was more resistant to wear than other products, testing by Bonar Yarns, another FieldTurf supplier, concluded the opposite. Gilman knew of this inconsistency and expressed some concern. In a May 2005 email to FieldTurf's director of manufacturing, he questioned whether FieldTurf had "erred in our over exuberance in the adoption of the monofilament yarns, specifically the Mattex yarns?" Nevertheless, FieldTurf pushed Duraspine Turf to market and later entered two subsequent supply agreements with Mattex's successor, TenCate.

B. FieldTurf marketed Duraspine Turf as durable, wear resistant, and cheaper in the long run because of its greater life expectancy.

34. In advertising Duraspine Turf to school districts, municipalities, universities, and athletic organizations, FieldTurf showcased high-profile clients like the National Football League's New England Patriots. FieldTurf representatives touted Duraspine Turf as the best that money could buy. Despite its higher cost, the company lured customers with promises of lower costs in the long-run, given Duraspine Turf's greater life expectancy: the new surface, FieldTurf claimed, could be used almost continuously year-round, and would last longer than the competition despite greater use.

35. CEO John Gilman claimed in a 2006 trade publication that, among other things, his company's "breakthrough in technology" would "change the industry," as Duraspine Turf "will double the expected useful life"

Versatile and Adaptable

Monofilament is a significant technological advance, according to FieldTurf Tarkett CEO John Gilman. "We believe it will change the industry as much as the original material did," he says. "For one thing, it will double the expected useful life of the installation because the individual fibers used in the mono surface are both stronger and more chemically uniform than those used in the traditional product. That means they wear more slowly and can be formulated to resist environmental agents, like ozone, which attack polymer materials."

Mono is an important new product, Gilman explains: "It's a breakthrough in technology every bit as important as the original surface was," he says. "Mono is the result of a lot of hard work in collaboration with our material suppliers to develop a product and a process that significantly improves the properties of the playing surface."

The shape of the monofilament fiber is based on similar structures found in nature. The arched profile features a durable "spine," which runs vertically through the center of each fiber. The fiber is extruded through a spinneret and is a "true" monofilament fiber, not a flimsy slit tape like competing systems.

"We anticipate that a mono surface will have a useful life longer than the 10 years we expect from a tape filament surface. We have also developed a patented process that causes some of the filaments in the mono surface to lie over while others stand straight up." – John Gilman, CEO, FieldTurf Tarkett

The yarn is also much stronger than the tape filaments. "So the surface will last longer, all things being equal," says Gilman. "We anticipate that a FieldTurf mono surface will have a useful life longer than the 10 years we expect from a tape filament surface. We have also developed a patented process that causes some of the filaments in the mono surface to lie over while others stand straight up. This helps keep the infill material in place much better than the first generation materials. Even the 'splash' from a bouncing soccer ball is completely encapsulated on a FieldTurf Duo filament field."

36. In marketing materials, FieldTurf explained that Duraspine had "unmatched 'memory' and thus resistance to matting." Rather than a "flimsy slit tape like competing systems," Duraspine would deliver "unmatched durability, especially resistance to wear. Tests indicate the Duraspine fiber is far more resistant to UV and foot traffic, the two main enemies of any turf system." A representative sample of some of FieldTurf's marketing materials stated:




The DuraSpine monofilament fiber is based on similar structures found in nature. The arched profile features a durable “spine” which runs vertically through the center of each fiber. Like the center stem or vein on a blade of grass, this spine gives each fiber unmatched “memory” and thus resistance to matting. This system also enhances ball-roll properties, bio-mechanics and aesthetics.

DuraSpine is extruded through a spinneret, and as a “true” monofilament fiber - not a flimsy slit tape like competing systems - delivers unmatched durability, especially resistance to wear. Tests indicate the DuraSpine fiber is far more resistant to UV and foot traffic, the two main enemies of any turf system. Unlike some new fibers on the market, DuraSpine is not abrasive to players but is silky and lush just like nature intended.

The DuraSpine Monofilament Turf System is available in a monotone or duotone green. FieldTurf can also produce DuraSpine in custom colors to match any endzone or logo requirements. The fiber may be new, but the patented infill system remains the same, a proven success in over 2000 installations worldwide.

37. In another FieldTurf flyer, FieldTurf stated that “[b]y choosing to invest in quality, safety and performance rather than basement pricing, FieldTurf has helped to ensure a successful future for your athletes, your program, your facilities and your finances. . . . [A]lthough FieldTurf sometimes costs more to install it is actually cheaper over the long term.”

38. Likewise, in a document titled “10 Reasons Why FieldTurf And Its MonoGrass System Should be Selected,” FieldTurf claimed:



**10 Reasons Why FieldTurf
And Its MonoGrass System
Should be Selected**

1. MONOFILAMENT FIBERS—DURABILITY AND VALUE

In the last few years, FieldTurf has focused on new products that have all the best attributes of traditional PE slit film yarns, with the added *durability* that is only possible with the monofilament production process. FieldTurf's efforts have resulted in a patented fiber unavailable to any other company.

FieldTurf's new "DuraSpine" MONOFILAMENT fiber offers INCREASED PRODUCT LIFE. Comparative wear testing shows a wide gap in wear resistance between standard, proven slit film fibers (including FieldTurf's own slit film, which has a proven 8-10 year life cycle) and this new generation of "true" monofilament. Although at this point it is impossible to correlate this additional toughness to a set period of extended product life, the fact remains that the new FieldTurf system will last longer.

And the longer a product lasts, the more economical it is from a life cycle standpoint! Buying FieldTurf with the new MONOFILAMENT, regardless of initial price, is a BETTER VALUE.

This added longevity will actually allow the District to amortize the life of the field on a 10+ year basis rather than the 8+ year life expectancy. This represents a much greater return on investment than the older slit film products currently being installed by most companies in the market. FieldTurf has in place over 40 MONOFILAMENT applications in North America, including fields at the NCAA Division I level. No other company has this kind of fiber or such proven fields in place.

2. MONOFILAMENT FIBERS—PLAYABILITY AND AESTHETICS

FieldTurf's new-generation monofilament system is the closest thing yet to a grass-like surface.

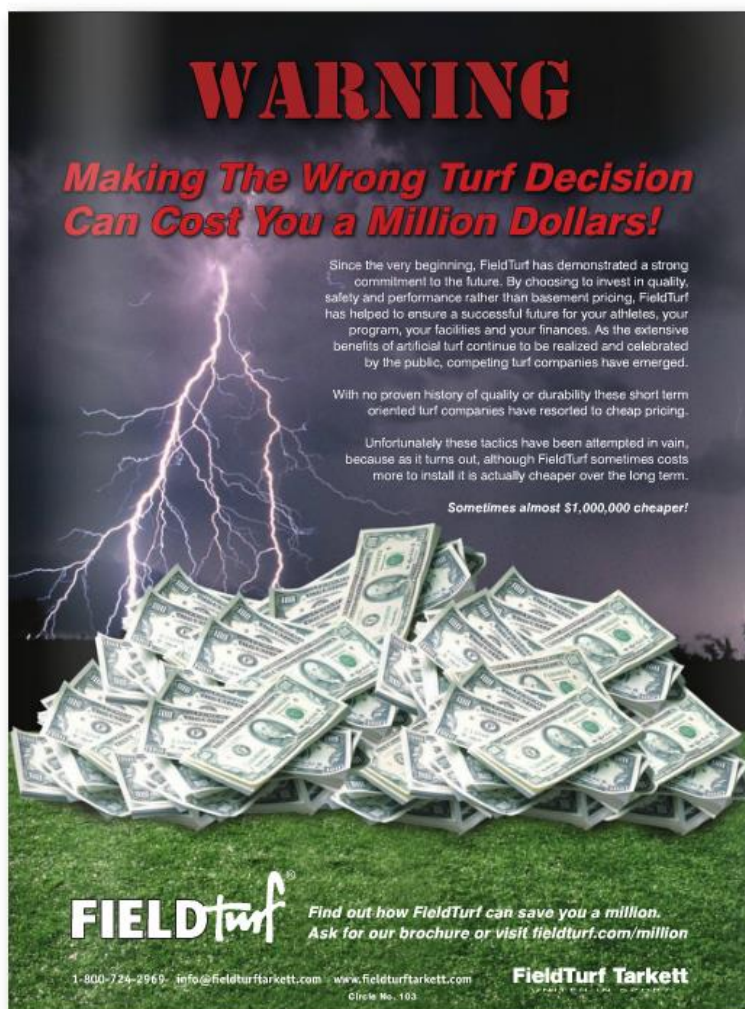
- The fibers have excellent "memory" so they remain looking like new grass—erect fibers, not a matted carpet.
- The erect fibers offer "resistance" to soccer balls, making the system more grass-like—the ball rolls and plays exactly like it does on grass according to FIFA testing--and thus is more useful for soccer players.
- The fibers, though more durable, are quite soft, which will virtually eliminate skin abrasions.

3. COMPLETE PRODUCT QUALITY CONTROL

39. Further, FieldTurf boasted about its unrivaled and rigorous quality control, its eight-year warranty (which it claimed the fields would far outlast), and the fact that “FieldTurf

has nothing to hide.” Duraspine’s remarkable qualities, it proclaimed, was “[n]o marketing spin.”

40. FieldTurf also told its customers, that even though its products may initially be more expensive than its competitor’s products, over the long run, FieldTurf’s products would potentially save the customer millions:

An advertisement for FieldTurf. The background is dark with a bright lightning bolt striking down. In the foreground, there is a large pile of US dollar bills. The text is in red and white.

WARNING

***Making The Wrong Turf Decision
Can Cost You a Million Dollars!***

Since the very beginning, FieldTurf has demonstrated a strong commitment to the future. By choosing to invest in quality, safety and performance rather than basement pricing, FieldTurf has helped to ensure a successful future for your athletes, your program, your facilities and your finances. As the extensive benefits of artificial turf continue to be realized and celebrated by the public, competing turf companies have emerged.

With no proven history of quality or durability these short term oriented turf companies have resorted to cheap pricing.

Unfortunately these tactics have been attempted in vain, because as it turns out, although FieldTurf sometimes costs more to install it is actually cheaper over the long term.

Sometimes almost \$1,000,000 cheaper!

FIELDturf Find out how FieldTurf can save you a million.
Ask for our brochure or visit fieldturf.com/million

1-800-724-2969 info@fieldturfarkett.com www.fieldturfarkett.com **FieldTurf Tarkett**
Circle No. 103

41. Although FieldTurf assured customers that they likely would never need a warranty, it provided an express eight-year warranty for purchases of Duraspine Turf. The warranty stated:

FieldTurf USA warrants that if [Duraspine Turf] proves to be defective in material or workmanship, resulting in premature wear, during normal and ordinary use of the Product for sporting activities set out below or for any other uses for which FieldTurf gives written authorization, within 8 years from the date of completion of installation, FieldTurf will, at FieldTurf's option, either repair or replace the affected area without charge, to the extent required to meet the warranty period (but no cash refunds will be made).⁵

42. These marketing efforts were successful, as sales nearly doubled within a few years. FieldTurf benefited from Duraspine Turf's high price and profit margin, and the product's popularity led FieldTurf to hold the largest market share among synthetic turf manufacturers. In 2014, FieldTurf's V.P. of Sales and Marketing testified that, "[s]ales probably almost doubled in a few years . . . Very high margins, high prices, and it was very successful." The average price for a defective Duraspine Turf field was between \$300,000 and \$500,000, although some customers paid nearly \$1 million.

C. FieldTurf early on knew the falsity of its representations about Duraspine Turf, but continued to make false representations to customers.

43. As early as October 2006, FieldTurf learned that its marketing claims regarding Duraspine Turf's performance and durability conflicted with facts. Some of the earliest Duraspine Turf installations occurred in South American countries with intense UV radiation, and early on a FieldTurf employee responsible for the region notified John Gilman that the fields were already showing premature wear. In 2006, FieldTurf's operations director for Latin

⁵ *Manufacturer's Limited Warranty*, FieldTurf, available at http://media.nj.com/ledgerupdates_impact/other/2016/11/15/WWPS%20Warranty.pdf (last visited January 5, 2017).

America emailed FieldTurf's CEO and other high ranking executives, stating, "[t]he corner kick and goal mouth areas are showing premature wear in both the small fields and the big fields."

44. Around the same time, this employee also reported that a Chilean customer had complained that FieldTurf's first South American field, a slit-film field installed in 2003, was in better condition than the less-than-1-year-old Duraspine Turf fields. The employee reported, "I gather that the mono fiber did not perform as expected."

45. As a result of these disturbing reports, on or about December 28, 2006, FieldTurf's CEO Gilman wrote to van Balen at Mattex (FieldTurf's supplier): "We are seeing fields showing splitting under a year of play and have already had to replace one full-sized field due to yarn failure after only a few months of installation!" Van Balen responded that the Duraspine material was "excellent," to which Gilman retorted: "Telling me the technology is excellent means nothing." "Now we know with heavy use, the fiber is coming apart." On New Year's Eve 2006, Gilman again wrote to van Balen, "It's all about that old story of waiting for the next shoe to drop," John Gilman wrote. "We have had a few failures as you know. The question is ... will many others fail? Who knows?"

46. Gilman further warned Mattex that if Duraspine Turf continued to fail, FieldTurf would make a warranty claim to Mattex – which in turn might interfere with Mattex's then lucrative effort to be acquired by TenCate. Since van Balen was an owner of Mattex, he stood to gain a considerable amount of money in any acquisition. And, in fact, when Mattex was acquired, he made approximately \$13 million. At the end of December 2006, Gilman prepared a letter to van Balen, although it is not clear whether or not it was sent:

Dear Jerrold,

December 27, 2006

We have a fiduciary responsibility to be aware of any future claims. Should we expect to have to replace more of these first version Evolution fields? The cost to replace a field is approximately \$3.00/sq USD plus the removal and dumping costs. With over 700+ fields in the ground already with Evolution, and if a fifth of these fields already installed failed, the possible claim could be upwards of \$35 million to replace them! Is the current pricing structure putting any reserve in place for this possibility?

There are currently a number of fields installed in Europe and the US that are starting to show wear and yarn splitting after less than a year in the ground, we need to have some assurance from Mattex that there is a plan and sufficient reserve in place to address any future claims for at least the next 24 months.

We must have this issue addressed prior to the execution of the 2007 contract. I await your response.

Sincerely,

John Gilman
CEO, Fieldstar/Tarkett

FieldTurf Tarkett
UNITED IN SPORT

[illegible]

Confidential

FT00296583

- 18 -

48. CEO John Gilman died in July 2007, at which time David Moszkowski assumed interim CEO responsibilities. Ken Gilman, John Gilman's son and also a FieldTurf executive, arranged a trip for Moszkowski to visit New Jersey to learn more about the problems with Duraspine. Ken Gilman summarized the findings of the trip in an email. He wrote:

[Duraspine] is nowhere near as robust or resilient as we initially thought and probably will not last that much longer than a high quality slit-film yarn. . . . In all likelihood in years 5 and 6 these Duraspine fields will be matted down and fibrillating pretty heavily. . . . Our marketing claims and sales pitches need to reflect this reality.

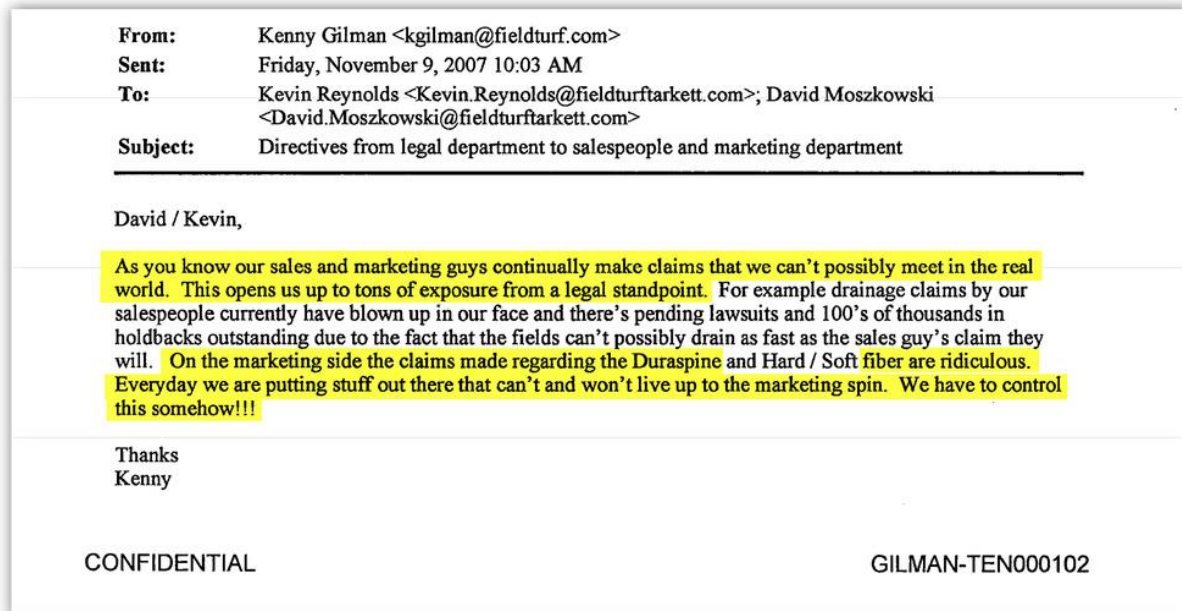
Duraspine, he explained, was "beginning to deteriorate at an alarming rate" and so the "advantages of monofilament (have) been exaggerated."

49. Subsequently, FieldTurf's lawyer opined that the email above was discoverable and could be used against FieldTurf in litigation, spurring Ken Gilman to ask FieldTurf's IT consultant, in an email upon which CEO Moszkowski was copied, whether the email chain could be permanently destroyed:

It's our lawyer's opinion that this email thread contains information that could be used against us in a lawsuit as it is 'discoverable . . . Can we somehow get it zapped off?

50. The IT consultant responded and said it was not likely the email could be wiped from FieldTurf's systems, because too many copies were likely made. In addition, he stated, "[l]egally, it is not possible . . . You would be asking me . . . to commit a possible crime."

51. Ken Gilman continued to persist in pressing Moszkowski and his successors into revising FieldTurf's marketing claims:



52. Despite this knowledge concerning the problems experienced with Duraspine Turf, FieldTurf installed 317 Duraspine Turf fields in 2007, worth at least \$127 million.

53. In a February 2008 email to Moszkowski, Ken Gilman wrote that “Duraspine is not all that it’s cracked up to be especially in terms of wear resistance.” When FieldTurf named Joe Fields as CEO in March 2008, on the same day Fields started as CEO, Ken Gilman again told FieldTurf upper management about the numerous problems with Duraspine Turf: “Irresponsible sales and marketing claims are made continuously that the product simply cannot possibly technically deliver on.” He opined that the false representations “set[] us up for future claims, unhappy customers, lawsuits, etc.”

54. In response, Fields signed another exclusive supply agreement for Duraspine with TenCate in or around July 2008. That year, Duraspine Turf sales peaked, with 419 installations in the United States worth at least \$168 million.

55. According to Court records, in or around September 2008, Ken Gilman, former CEO Moszkowski, and FieldTurf's Vice President of Operations were terminated.

D. As customer complaints about Duraspine mounted in 2009 and 2010, FieldTurf denied its knowledge about the problem.

56. In 2009 and 2010, FieldTurf received an “alarming number of complaints from customers” who purchased Duraspine Turf. They uniformly “complained that the fiber on their field[s] is fading, splitting, thinning and ultimately disintegrating within two to three years of installation.”⁶

57. In response to these complaints and accompanying warranty claims, FieldTurf repeatedly refused to honor the terms of its express written warranty. For example, when the Palisades School District in suburban Philadelphia, Pennsylvania complained of defective Duraspine Turf in 2012, FieldTurf offered an upgrade to an entirely new product – at a cost to the school district of \$410,611.00. When school officials balked, FieldTurf offered a replacement for \$325,000.00 – in direct conflict with the express warranty's promise of a no-cost repair.

58. Likewise, when the Collinsville, Oklahoma School District sought a replacement for its defective Duraspine Turf, FieldTurf offered to replace it for around \$250,000.00, again in violation of the warranty.

59. As customers complained and FieldTurf simultaneously experienced a decline in sales, FieldTurf replaced Fields with a new CEO, Eric Daliere, in September 2009. Later, in early 2010, FieldTurf commenced an internal investigation into Duraspine Turf's problems. The results of the investigation were chronicled in a December 2010 internal report. The report noted

⁶ *Summary of Results of Investigation Into Causes of Fiber Failure*, available at http://media.nj.com/ledgerupdates_impact/other/2016/11/15/FT%20Internal%20Investigation.pdf (last visited January 5, 2017).

that the investigation was commenced due to an “alarming” number of complaints concerning the Duraspine Turf products. The report posited that the primary cause of Duraspine Turf failures was that its products contained inadequate protection from ultraviolet light and heat. Following the investigation, CEO Daliere said in a statement that FieldTurf was “surprised” to learn that Duraspine Turf inadequately withstood UV radiation in light of assurances from Mattex/TenCate and their own initial testing. Only then, FieldTurf claimed, did it first become aware of Duraspine Turf’s shortcomings. The earlier discussions, it explained, did not make clear that UV radiation was the cause.

60. In November 2010, FieldTurf informed TenCate it intended to pursue claims over the defective Duraspine Turf and sought settlement negotiations. TenCate responded that FieldTurf had breached the supply agreement by developing a new competing product and, consequently, TenCate would end FieldTurf’s access to Duraspine on March 2, 2011, rather than on December 11, 2011 (the expiration date of the latest supply agreement).

61. On March 1, 2011, FieldTurf filed a lawsuit against TenCate. FieldTurf alleged claims for fraudulent inducement of contract and breach of warranties, and claimed that sometime after FieldTurf and TenCate entered into the supply agreement in 2005, TenCate altered the turf’s formula by replacing quality ingredients with cheaper alternatives. TenCate claimed that the failures owed to FieldTurf’s poor installations, and it supported its position by pointing out that FieldTurf continued to sell Duraspine Turf, including 307 fields in 2009, 164 in 2010, 28 in 2011, and one in 2012, when it claimed that it had knowledge of the product’s alleged defects. TenCate and FieldTurf settled in 2014 for an undisclosed sum, but believed to be in the tens of millions.

V. CLASS ALLEGATIONS

62. Plaintiff brings this action against FieldTurf on behalf of itself, and as a class action, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of the following class:

All persons in the United States and its territories who purchased Duraspine Turf from FieldTurf or its affiliates, entities, or subsidiaries. Excluded from the Class are FieldTurf, or their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees. Also excluded from the Class are authorized Duraspine Turf installers.

63. Plaintiff reserves the right to modify or amend the definition of the proposed class before the Court determines whether certification is appropriate.

64. The proposed class exceeds 1,400 individuals, and as such, is so numerous that joinder would be impracticable.

65. The individual class members are ascertainable, as the names and addresses of all class members can be identified in FieldTurf's business records.

66. Numerous questions of law or fact arise from FieldTurf's conduct that are common to the Class, including, but not limited to:

- a. Whether Duraspine Turf is defective under normal use and within expected useful lifespan, as advertised by FieldTurf;
- b. Whether and when FieldTurf had knowledge of the defects in Duraspine Turf;
- c. Whether FieldTurf concealed defects in Duraspine Turf;
- d. Whether FieldTurf had a duty to disclose material facts to Plaintiff and the Class regarding defects in the Duraspine Turf;
- e. Whether FieldTurf's omissions regarding the Duraspine Turf were likely to deceive Plaintiff and the Class;
- f. Whether FieldTurf's alleged conduct constitutes the "use or employment by any person of any unconscionable commercial practice, deception, fraud, false

pretense, false promise and misrepresentation . . . in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby” within the meaning of the New Jersey Consumer Fraud Act and other applicable state consumer fraud statutes;

- g. Whether further, or in the alternative, FieldTurf has been unjustly enriched under New Jersey, Georgia or other applicable state laws;
- h. Whether FieldTurf has violated its express warranties with Plaintiff and the Class;
- i. Whether FieldTurf has violated the implied warranty of merchantability under New Jersey, Georgia or otherwise applicable state law;
- j. Whether FieldTurf actively concealed the Duraspine Turf defect in order to maximize profits to the detriment of Plaintiff and the Class;
- k. Whether Plaintiff and the Class members are entitled to damages, restitution, disgorgement, equitable relief, or other relief;
- l. The amount and nature of such relief to be awarded to Plaintiff and the Class; and
- m. Whether FieldTurf’s concealment of defects in the Duraspine Turf toll applicable statutes of limitations, if any.

These and other questions are common to the Class and predominate over any questions affecting only individual class members.

67. Plaintiff’s claims are typical of the Class in that Plaintiff received the same misrepresentations and warranties from FieldTurf and was subject to the same omissions of material fact as all other class members. Plaintiff and all class members were damaged by the same wrongful conduct of FieldTurf, and the relief sought is common to the Class.

68. Plaintiff will fairly and adequately represent the interests of the Class in that it has no conflict with any other members of the Class. Furthermore, Plaintiff has retained competent counsel experienced in class action and other complex commercial litigation.

69. FieldTurf has acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

70. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. Prosecution as a class action will eliminate the possibility of repetitive litigation. There will be no material difficulty in the management of this action as a class action.

71. The prosecution of separate actions by individual class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for FieldTurf.

VI. TOLLING OF STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

72. Plaintiff and Class members had no way of knowing about the defects in Duraspine Turf and the other information concealed by FieldTurf. FieldTurf systematically lied to Plaintiff and Class Members concerning the qualities of Duraspine Turf. When problems were discovered, FieldTurf claimed there was no defect, and provided other reasons for the rapid deterioration in FieldTurf's products, like poor maintenance. In addition, FieldTurf advised Plaintiff and Class Members that over time, the problems they were experiencing, would diminish.

73. Further, FieldTurf has repeatedly and consistently misled Plaintiff and the Class by engaging in extensive misdirection towards the Plaintiff and the class. FieldTurf repeatedly represented that to the extent any customers had experienced more rapid deterioration in their field than promised, the problem related only to those customers in "high UV" areas. FieldTurf's

CEO, Eric Daliere, specifically said the New Jersey was not a “high UV” area, therefore suggesting that Duraspine Turf fields in New Jersey were not subject to any known defects.

74. In addition, internally FieldTurf acknowledged that the Duraspine Turf defect may not manifest itself until several years after installation, but well before the expiration of the warranty period. For example, in an internal email, a FieldTurf executive: “[Duraspine] is nowhere near as robust or resilient as we initially thought and probably will not last that much longer than a high quality slit-film yarn. . . . In all likelihood *in years 5 and 6* these Duraspine fields will be matted down and fibrillating pretty heavily. . . . Our marketing claims and sales pitches need to reflect this reality.” (Emphasis added).

75. Within the period of any applicable statutes of limitation, Plaintiff and the other Class Members could not have discovered through the exercise of reasonable diligence that FieldTurf was concealing defects in its Duraspine Turf products.

76. Plaintiff and the other Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that FieldTurf knew that its products were defective, nor would a reasonable and diligent investigation have disclosed that FieldTurf had information in its possession about the existence of defects and that FieldTurf opted to conceal, and still conceals, information about the defect. It was not until December 2016, when a detailed exposé was published on FieldTurf which provided an accounting of FieldTurf’s deceit.

77. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. Fraudulent Concealment Tolling

78. All applicable statutes of limitation have also been tolled by FieldTurf's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the period relevant to this action and through today.

79. Instead of disclosing the defects in its products of which it was aware, FieldTurf falsely represented, among other things, that its Duraspine Turf products were the most durable on the market, and would last far longer than their warranty.

C. Estoppel

80. FieldTurf was under a continuous duty to disclose to Plaintiff and the other Class Members the true character, quality, and nature of the many defects plaguing its Duraspine Turf products.

81. FieldTurf knowingly, affirmatively, and actively concealed the true nature, quality, and character of the problems in its Duraspine Turf products from its customers. Further, FieldTurf often offered a myriad of other causes, which were lies, for its customer's problems with their Duraspine Turf. FieldTurf also advised its customers that the issues they were experiencing would diminish over time. These were also lies.

82. Based on the foregoing, FieldTurf is estopped from relying on any statutes of limitations in defense of this action.

VII. CAUSES OF ACTION

COUNT I

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT N.J. REV. STAT. § 56:8-1 *ET SEQ.*

83. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

84. FieldTurf marketed, sold, manufactured, and installed defective Duraspine Turf from 2005 to 2012, actively concealing the defects and touting a ten-plus year lifespan despite knowing that Duraspine Turf prematurely deteriorated not long after installation, in direct conflict with its representations to Plaintiff and the Class, which includes municipalities, school districts, universities, and athletic organizations in New Jersey and across the United States.

85. As a result of FieldTurf's deception and misrepresentations, Plaintiff and the Class, elected to purchase and install Duraspine Turf. As described in detail above, FieldTurf made repeated and consistent misrepresentations and deceptive statements in deceiving Plaintiff and the Class, knowing no later than October 2006 that its representations concerning Duraspine Turf were patently false. FieldTurf also knew by 2007 that Duraspine Turf could not meet the expectations FieldTurf set with Plaintiff and other Class Members, and by 2009 that its marketing campaign was grossly exaggerated in light of substantial complaints from class members.

86. Rather than adjust its marketing claims to cohere with the reality of Duraspine Turf's performance and longevity, and also warn existing customers about Duraspine Turf's defects, FieldTurf chose to continue making false representations about the product to maximize profits and protect its market share.

87. Through its deceptive marketing campaign and misrepresentations, FieldTurf deceived and misrepresented to Plaintiff and the Class that Duraspine Turf had a ten-plus year lifespan that would be long-lasting and low maintenance, mimic the appearance and performance of natural grass, and provide long term cost savings compared to alternatives.

88. The New Jersey Consumer Fraud Act (NJFCA) prohibits the “use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise and misrepresentation . . . in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby,” N.J. Rev. Stat. § 56:8-2.

89. As described, FieldTurf has engaged in unconscionable commercial practices, deceptive and fraudulent acts, and misrepresentations in the conduct of its sale of Duraspine Turf fields in the State of New Jersey to Plaintiff and the Class. Any reasonable person would have relied on FieldTurf’s representations when marketing its Duraspine Turf products, and, in fact, Plaintiff and Class Members paid significantly more for their Duraspine Turf products than if they purchased a competitive product.

90. The NJCFA allows “[a]ny person who suffers an ascertainable loss of moneys . . . as a result of the use or employment by another person any method, act, or practice declared unlawful under the [NJCFA]” to bring an action in any court of competent jurisdiction. N.J. Rev. Stat. § 56:8-19.

91. Plaintiff and the Class are persons within the meaning of the NJCFA. *See* N.J. Rev. Stat. § 56:8-1(d).

92. Plaintiff and the Class have suffered an ascertainable loss of money because of FieldTurf's unlawful methods, acts, and practices. Thus, the NJFCA entitles Plaintiff and the Class to actual damages, treble damages, an award of reasonable attorneys' fees, filing fees, and reasonable costs. N.J. Rev. Stat. § 56:8-19.

93. Accordingly, Plaintiff, on behalf of itself and the Class, seeks judgment against FieldTurf for actual damages, treble damages, reasonable attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

COUNT II

BREACH OF EXPRESS WARRANTY UNDER NEW JERSEY LAW N.J. REV. STAT. § 12A:2-313

94. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

95. When FieldTurf's Duraspine Turf prematurely deteriorated before the expiration of its eight-year warranty, many members of the Class contacted FieldTurf with warranty claims.

96. FieldTurf repeatedly responded by denying the claims, delaying the processing of these claims until the warranty expired, or offering customers repair or replacement at substantial cost.

97. FieldTurf's express warranty with Plaintiff and the Class required it to repair or replace defective Duraspine Turf at no cost within the eight-year warranty period. FieldTurf's various oral and written representations regarding Duraspine Turf's performance, also constituted an express warranty to its customers.

98. FieldTurf's response to warranty claims, including denials, delayed processing, and offers for repair or upgrade only at cost to the Class, is in breach of FieldTurf's express warranty to Plaintiff and the Class.

99. Under New Jersey law, Plaintiff and class are entitled to recover damages for the FieldTurf's breach of its express warranty in the amount of the difference between the defective Duraspine Turf, as delivered, and the product's value as it was warranted. N.J. Rev. Stat. § 12A:2-313.

100. Accordingly, on behalf of itself and the Class, Plaintiff seeks to recover damages between the actual value of the defective Duraspine Turf and the product as warranted, in an exact amount to be determined at trial, and all other damages and remedies, including consequential and incidental damages, as permitted by New Jersey law, including N.J. Rev. Stat. §§ 12A:2-313 *et seq.*

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY UNDER NEW JERSEY LAW

101. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

102. Plaintiff's purchase of Duraspine Turf is governed by New Jersey law.

103. Under New Jersey law, "a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." N.J. Rev. Stat. § 12A:2-314. To be merchantable, a good must be "fit for the ordinary purposes for which such goods are used." *Id.*

104. Plaintiff and the Class relied on FieldTurf's skill and judgment in the sale, manufacture, and installation of synthetic turf surfaces when they elected to purchase and install the Duraspine Turf, which FieldTurf marketed as best in class, with high durability and longevity during dawn-to-dusk, year-round use for athletic practices and contests.

105. FieldTurf knew that Plaintiff and the Class relied on its skill and judgment in the sale, manufacture, and installation of Duraspine Turf fields.

106. FieldTurf's Duraspine Turf was not fit for the ordinary purposes for which it was to be used because it quickly deteriorated well in advance of its promised useful life, thereby preventing Plaintiff and the Class from using it from dawn-to-dusk, year-round for athletic practices and contests over a ten-plus year period.

107. Accordingly, FieldTurf is in breach of the implied warranty.

108. Thus, on behalf of itself and the Class, Plaintiff seeks to recover damages between the actual value of the defective Duraspine Turf and the product as it would have been were it fit for its ordinary purpose, in an exact amount to be determined at trial, and all other damages and remedies, including consequential and incidental damages, as permitted by New Jersey law, including N.J. Rev. Stat. §§ 12A:2-701-25.

COUNT IV

COMMON LAW FRAUD UNDER NEW JERSEY LAW

109. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

110. FieldTurf made numerous material misrepresentations to Plaintiff and Class members, concerning the performance of its "revolutionary" Duraspine Turf products. In addition, FieldTurf failed to disclose numerous material facts concerning the failure rate of its

Duraspine Turf products, and, that FieldTurf knew that its Duraspine Turf products would not perform as intended.

111. The representations made by defendant were false. At the time they were made, FieldTurf knew they were false.

112. FieldTurf knew its various representations about its Duraspine Turf products were false, but made them in an effort to induce Plaintiff and other Class members to purchase its Duraspine Turf products at a premium price.

113. At the time FieldTurf made these misrepresentations, Plaintiff and other Class members were ignorant of the falsity of FieldTurf's representations and believed them to be true. In reliance on these representations, Plaintiff and other Class members were induced to and did purchase a Duraspine Turf product. Had Plaintiff known the actual facts, Plaintiff and other Class members would not have purchased Duraspine Turf products, or, would not have paid as much for their Duraspine Turf products.

114. As a direct and proximate result of FieldTurf's fraud, Plaintiff and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT V

FRAUDULENT CONCEALMENT UNDER NEW JERSEY LAW

115. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

116. FieldTurf intentionally concealed that its Duraspine Turf products were highly defective, or acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

117. FieldTurf further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided to Plaintiff and other Class members, that the Duraspine Turf products that it was selling had no defects, were substantially more durable than any other product on the market, or even its own products, and would perform properly.

118. FieldTurf knew these representations were false when made.

119. The Duraspine Turf products purchased by Plaintiff and the other Class members were, in fact, defective, and deteriorated much faster than promised under normal conditions.

120. FieldTurf had a duty to disclose that its Duraspine Turf products suffer from numerous defects, because Plaintiff and the other Class members relied on FieldTurf's material representations that Duraspine Turf products were far superior to any other artificial turf surface in existence.

121. The aforementioned concealment was material because if it had been disclosed, Plaintiff and the other Class members would not have bought Duraspine Turf products, or would not have bought at the prices they paid.

122. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing an artificial turf surface. FieldTurf knew or recklessly disregarded that its representations were false because it had actual knowledge that its Duraspine Turf products suffered from numerous and significant defects which they knew would

cause the Duraspine Turf products to fall well short of FieldTurf's representations concerning Duraspine Turf products.

123. Plaintiff and the other Class members relied on FieldTurf's reputation—along with their failure to disclose the defective nature of the Duraspine Turf products—in purchasing their Duraspine Turf product.

124. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment for their Duraspine Turf product.

125. FieldTurf's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

COUNT VI

BREACH OF CONTRACT UNDER NEW JERSEY LAW

126. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

127. Each and every sale of a Duraspine Turf product constitutes a contract between FieldTurf and the purchaser. FieldTurf breached these contracts by, among other things, selling to Plaintiff and the other Class members, defective Duraspine Turf products and by misrepresenting or failing to disclose that Duraspine Turf products were defective, and were not durable.

128. FieldTurf's misrepresentations and omissions alleged herein, including but not limited to its failure to disclose that its Duraspine Turf products were actually defective and were

not durable, caused Plaintiff and the other Class members to make their purchases of their Duraspine Turf products. Absent those misrepresentations and omissions, Plaintiff and the other Class members would not have purchased Duraspine Turf products, would not have purchased Duraspine Turf products at the prices they paid. Accordingly, Plaintiff and the other Class members overpaid for their Duraspine Turf products and did not receive the benefit of their bargain.

129. As a direct and proximate result of FieldTurf's breach of contract, Plaintiff and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VII

UNJUST ENRICHMENT UNDER NEW JERSEY LAW

130. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

131. FieldTurf received at least \$570 million in revenue from the sale of over 1,400 defective Duraspine Turf fields between 2005 and 2012.

132. This \$570 million in revenue was a benefit conferred upon FieldTurf by Plaintiff and the Class, which includes municipalities, school districts, universities, and athletic organizations in New Jersey and across the United States.

133. FieldTurf manufactured, marketed, sold, and installed defective Duraspine Turf fields to Plaintiff and the Class while actively concealing its known defects, including premature and early deterioration, all while claiming the Duraspine Turf was cost effective and promised a ten-plus year lifespan.

134. Under New Jersey law, a defendant must return a benefit conferred by a plaintiff when retention of that benefit would be unjust without remuneration by the defendant.

135. FieldTurf was unjustly enriched through financial benefits conferred upon it by Plaintiff and the Class, in the form of \$570 million in revenue.

136. Plaintiff and the Class elected to purchase and install Duraspine Turf fields based upon FieldTurf's misrepresentations, deception, and omissions. FieldTurf knew and understood that it would and did receive a financial benefit, and voluntarily accepted the same, from Plaintiff and the Class when they elected to purchase and install Duraspine Turf.

137. By selecting FieldTurf's Duraspine Turf and purchasing it at a premium price, Plaintiff and the Class expected that the Duraspine Turf would have the lifespan and performance promised by FieldTurf and would not deteriorate within a few years of installation. The reduced lifespan of Duraspine Turf and premature deterioration within a few years of installation unjustly enriched FieldTurf beyond its legal rights by securing through deceit and falsehoods \$570 million in revenues between 2005 and 2012.

138. Therefore, because FieldTurf will be unjustly enriched if it is allowed to retain the revenues obtained through falsehoods, deception, and misrepresentations, Plaintiff and each class member is entitled to recover the amount by which FieldTurf was unjustly enriched at his or her expense.

139. Accordingly, Plaintiff, on behalf of itself and all similarly situated, seeks damages against FieldTurf in the amounts by which FieldTurf has been unjustly enriched at Plaintiff's and the Class' expense, and such other relief as this Court deems just and proper.

COUNT VIII

**BREACH OF EXPRESS WARRANTIES BY AFFIRMATION, PROMISE,
DESCRIPTION, SAMPLE**

GA CODE ANN. § 11-2-313

140. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

141. Defendants are and at all times have been a “merchant” with respect to synthetic field turf systems under Ga. Code Ann. § 11-2-104(1) and a “seller” of synthetic field turf systems under Ga. Code Ann. § 11-2-103(1)(d).

142. Synthetic field turf systems are and were at all relevant times “goods” within the meaning of Ga. Code Ann. § 11-2-105(1).

143. Although FieldTurf assured customers that they likely would never need a warranty, FieldTurf provided an express warranty for a period of eight years from the date of completion of installation in connection with the purchase and/or sale of each synthetic field turf system.

144. FieldTurf’s express warranty with Plaintiff and the Class required it to repair or replace defective Duraspine Turf at no cost within the eight-year warranty period. FieldTurf’s various oral and written representations regarding Duraspine Turf’s performance, also constituted an express warranty to its customers.

145. When FieldTurf’s Duraspine Turf prematurely deteriorated before the expiration of its eight-year warranty, many members of the Class contacted FieldTurf with warranty claims.

146. FieldTurf repeatedly responded by denying the claims, delaying the processing of these claims until the warranty expired, or offering customers repair or replacement at substantial cost.

147. FieldTurf's response to warranty claims, including denials, delayed processing, and offers for repair or upgrade only at cost to the Class, is in breach of FieldTurf's express warranty to Plaintiff and the Class.

148. Under Georgia law, Plaintiff and class are entitled to recover damages for FieldTurf's breach of its express warranty in the amount of the difference between the value of the defective Duraspine Turf, as delivered, and the product's value as it was warranted, unless special circumstances show proximate damages of a different amount. Ga. Code Ann. § 11-2-714(2).

149. Accordingly, on behalf of itself and the Class, Plaintiff seeks to recover damages between the actual value of the defective Duraspine Turf and the product as warranted, in an exact amount to be determined at trial, and all other damages and remedies, including consequential and incidental damages, as permitted by Georgia law, including Ga. Code Ann. § 11-2-714(3) and 11-2-715.

COUNT IX

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

GA CODE ANN. § 11-2-314

150. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

151. Defendants are and at all times have been a “merchant” with respect to synthetic field turf systems under Ga. Code Ann. § 11-2-104(1) and a “seller” of synthetic field turf systems under Ga. Code Ann. § 11-2-103(1)(d).

152. Synthetic field turf systems are and were at all relevant times “goods” within the meaning of Ga. Code Ann. § 11-2-105(1).

153. Unless excluded or modified, a warranty that synthetic turf field systems are in merchantable condition and fit for the ordinary purpose for which artificial turf fields are used is implied by law, pursuant to Ga. Code Ann. § 11-2-314.

154. There was no exclusion or modification of the implied warranty of merchantability under Ga. Code Ann. in this case. *See* Ga. Code Ann. § 11-2-316,

155. FieldTurf’s Duraspine Turf was not fit for the ordinary purpose for which it was to be used because it quickly deteriorated well in advance of its promised useful life, thereby preventing Plaintiffs and the Class from using it in dawn-to-dusk, year-round for athletic practices and contests over a ten-plus year period.

156. Accordingly, FieldTurf is in breach of the implied warranty.

157. Thus, on behalf of itself and the Class, Plaintiff seeks to recover damages between the actual value of the defective Duraspine Turf and the product as warranted, in an exact amount to be determined at trial, and all other damages and remedies, including consequential and incidental damages, as permitted by Georgia law, including Ga. Code Ann. § 11-2-714(3) and 11-2-715.

COUNT X

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

GA CODE ANN. § 11-2-315

158. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

159. Defendants are and at all times have been a “merchant” with respect to synthetic field turf systems under Ga. Code Ann. § 11-2-104(1) and a “seller” of synthetic field turf systems under Ga. Code Ann. § 11-2-103(1)(d).

160. Synthetic field turf systems are and were at all relevant times “goods” within the meaning of Ga. Code Ann. § 11-2-105(1).

161. Under Georgia law, where a seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified under Code Section 11-2-316, an implied warranty that the goods shall be fit for such purpose. Ga. Code Ann. § 11-2-315.

162. There was no exclusion or modification of the implied warranty of merchantability under Ga. Code Ann. in this case. *See* Ga. Code Ann. § 11-2-316.

163. Plaintiff and the Class relied on FieldTurf’s skill and judgment in the sale, manufacture, and installation of synthetic field turf systems when they elected to purchase and install the Duraspine Turf, which FieldTurf marketed as best in class, with high durability and longevity during dawn-to-dusk, year-round use for athletic practices and contests.

164. FieldTurf knew that Plaintiff and the Class relied on FieldTurf’s skill and judgment in the sale, manufacture, and installation of Duraspine Turf fields.

165. FieldTurf at the time of contracting knew or had reason to know the particular purpose for which the Duraspine Turf fields were required by Plaintiffs and the Class.

166. FieldTurf's Duraspine Turf was not fit for the particular purpose for which it was to be used because it quickly deteriorated well in advance of its promised useful life, thereby preventing Plaintiff and the Class from using it from dawn-to-dusk, year-round for athletic practices and contests over a ten-plus year period.

167. Accordingly, FieldTurf is in breach of the implied warranty.

168. Thus, on behalf of itself and the Class, Plaintiff seeks to recover damages between the actual value of the defective Duraspine Turf and the product as warranted, in an exact amount to be determined at trial, and all other damages and remedies, including consequential and incidental damages, as permitted by Georgia law, including Ga. Code Ann. § 11-2-714(3) and 11-2-715.

COUNT XI

UNJUST ENRICHMENT UNDER GEORGIA LAW (IN THE ALTERNATIVE)

169. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

170. FieldTurf received at least \$570 million in revenue from the sale of over 1,400 defective Duraspine Turf fields between 2005 and 2012.

171. This \$570 million in revenue was a benefit conferred upon FieldTurf by Plaintiff and the Class, which includes municipalities, school districts, universities, and athletic organizations across the United States.

172. FieldTurf manufactured, marketed, sold, and installed defective Duraspine Turf fields to Plaintiff and the Class while actively concealing its known defects, including premature

and early deterioration, all while claiming the Duraspine Turf was cost effective and promised a ten-plus year lifespan.

173. Under Georgia law, a defendant must return a benefit conferred by a plaintiff which comprises an unjust enrichment which the defendant equitably ought to return or compensate for.

174. FieldTurf was unjustly enriched through financial benefits conferred upon it by Plaintiff and the Class, in the form of \$570 million in revenue.

175. Plaintiff and the Class elected to purchase and install Duraspine Turf fields based upon FieldTurf's misrepresentations, deception, and omissions. FieldTurf knew and understood that it would and did receive a financial benefit, and voluntarily accepted the same, from Plaintiff and the Class when they elected to purchase and install Duraspine Turf.

176. By selecting FieldTurf's Duraspine Turf and purchasing it at a premium price, Plaintiff and the Class expected that the Duraspine Turf would have the lifespan and performance promised by FieldTurf and would not deteriorate within a few years of installation. The reduced lifespan of Duraspine Turf and premature deterioration within a few years of installation unjustly enriched FieldTurf beyond its legal rights by securing through deceit and falsehoods \$570 million in revenues between 2005 and 2012.

177. Therefore, because FieldTurf will be unjustly enriched if it is allowed to retain the revenues obtained through falsehoods, deception, and misrepresentations, Plaintiff and each class member is entitled to recover the amount by which FieldTurf was unjustly enriched at his or her expense.

178. Accordingly, Plaintiff, on behalf of itself and all similarly situated, seeks damages against FieldTurf in the amounts by which FieldTurf has been unjustly enriched at Plaintiff's and the Class' expense, and such other relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class request that the Court enter an order or judgment against FieldTurf including the following:

A. Declaring that this action may be maintained as a class action pursuant to Federal Rules of Civil Procedure 23, and for an order certifying this case as a class action and appointing Plaintiff as class representative;

B. Finding that FieldTurf has violated the NJCFA, and awarding Plaintiff and the Class actual damages, punitive and/or treble damages, injunctive relief, declaratory relief, attorneys' fees, and costs under NJCFA;

C. Finding that FieldTurf has violated its express warranties to Plaintiff and the Class and awarding on that basis all damages and remedies permitted by New Jersey law;

D. Finding that FieldTurf has violated its implied warranty of merchantability to Plaintiff and the Class and awarding on that basis all damages and remedies permitted by New Jersey law;

E. Finding that FieldTurf has been unjustly enriched under New Jersey law, that Plaintiff and the Class have been injured as a result of FieldTurf's conduct, and that FieldTurf must refund all unjustly retained benefits to Plaintiff and the Class;

F. Finding that FieldTurf has violated its express warranties to Plaintiff and the Class and awarding on that basis all damages and remedies permitted by Georgia law;

G. Finding that FieldTurf has violated its implied warranty of merchantability to Plaintiff and the Class and awarding on that basis all damages and remedies permitted by Georgia law;

H. Finding further, or in the alternative, that FieldTurf has been unjustly enriched under Georgia law, that Plaintiff and the Class have been injured as a result of FieldTurf's conduct, and that FieldTurf must refund all unjustly retained benefits to Plaintiff and the Class;

I. Whether FieldTurf's conduct warrants punitive damages;

J. Awarding Plaintiff and the Class costs and disbursements and reasonable allowances for the fees of Plaintiff's and the Class's counsel and experts, and reimbursement of expenses;

K. Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Dated: March 10, 2017

CRITCHLEY, KINUM & DENOIA, LLC

BY: s/ Michael Critchley
Michael Critchley, Sr.
Michael Critchley, Jr.
75 Livingston Avenue
Roseland, NJ 07068
Tel: (973) 422-9200
Fax: (973) 422-9700
mcritchley@critchleylaw.com
mcjr@critchleylaw.com

Steve W. Berman
Anthea Grivas
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue
Suite 3300
Seattle, Washington 98101
Telephone: 206-623-7292
Facsimile: 206-623-0594
steve@hbsslaw.com
antheag@hbsslaw.com

Jason A. Zweig
HAGENS BERMAN SOBOL SHAPIRO LLP
455 N. Cityfront Plaza Dr., Suite 2410
Chicago, Illinois 60611
Telephone: (708) 628-4958
Facsimile: (708) 628-4950
jasonz@hbsslaw.com

David L. Isabel
Eric E. Tomaszewski, Esq.
MCMANIMON, SCOTLAND & BAUMANN,
LLC
75 Livingston Avenue
Roseland, New Jersey 07068
Telephone: (973) 622-5162
Facsimile: (973) 622-3744
disabel@msbnj.com
etomaszewski@msbnj.com

*Attorneys for Plaintiff the County of Hudson, New
Jersey*