

**FILED**  
Clerk of the Superior Court

FEB 10 2016

BY: V. NAVARRO

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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 Civil Division

13 37-2016-00004439-CU-PA-NC

14 **ANDREW WEIDEMANN, an**  
15 Individual,

CASE NO.:

16 Plaintiff,

17 v.

18 **COMPLAINT AND DEMAND**  
19 **FOR JURY TRIAL**

20 **TRINITY HIGHWAY PRODUCTS,**  
21 **LLC.; TRINITY INDUSTRIES, INC.;**  
22 **CITY OF SAN MARCOS; COUNTY**  
23 **OF SAN DIEGO; STATE OF**  
24 **CALIFORNIA; and DOES 1-50,**

25 Defendants.

26 1. Plaintiff, ANDREW WEIDEMANN, an Individual, brings this civil action  
27 in the Superior Court of the State of California for the County of San Diego against  
28 Defendants TRINITY HIGHWAY PRODUCTS, LLC and TRINITY INDUSTRIES,  
INC., CITY OF SAN MARCOS, COUNTY OF SAN DIEGO, and STATE OF  
CALIFORNIA, and alleges:

1 NATURE OF CAUSE OF ACTION

2 1. This action arises from injuries sustained by the Plaintiff, ANDREW  
3 WEIDEMANN (hereinafter "Plaintiff"), when he was driving along South Twin Oaks  
4 Valley Road in San Marcos and collided with a TRINITY guardrail and end terminal  
5 (hereinafter "the Collision").

6 2. The TRINITY guardrail and end terminal system struck by Plaintiff's vehicle was  
7 designed, manufactured and marketed by TRINITY. The guardrail and end terminal  
8 were intended to minimize the impact of a vehicle's collision into the guardrail by  
9 extruding the guardrail through the head so the guardrail flattens out into a ribbon. This  
10 would allow the energy from the impact to be absorbed and prevent the guardrail from  
11 penetrating the vehicle upon impact. However, TRINITY's original and/or modified,  
12 revised or altered guardrail and end terminal (hereinafter "the TRINITY Guardrail")  
13 prevented the original design from operating and performing as intended. As a result, the  
14 TRINITY Guardrail, instead of funneling itself to the side of the colliding automobile,  
15 directly penetrated Plaintiff's vehicle.

16 3. At the time of the Collision, the TRINITY Guardrail was defective and  
17 unreasonably dangerous. As a proximate result, the guardrail penetrated the vehicle and  
18 impaled Plaintiff, causing massive injuries that include but are not limited to severing one  
19 of Plaintiff's legs and severely handicapping the other leg. Therefore, the TRINITY  
20 Guardrail did not perform as safely as an ordinary consumer would have expected it to  
21 perform when used or misused in an intended or reasonably foreseeable way. Moreover, a  
22 reasonable alternative design to the TRINITY Guardrail existed in the marketplace that  
23 prevented the exact injury suffered by Plaintiff. In fact, TRINITY had in its possession  
24 and/or had actual knowledge of the exact specifications for the reasonable alternative  
25 design yet purposefully deviated from those specifications in its design of the TRINITY  
26 Guardrail, despite the increased probability and gravity of injury that could result from  
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1 such deviation. The reasonable alternative design was only nominally more expensive to  
2 produce than TRINITY's Guardrail.

3 **JURISDICTION AND VENUE**

4 2. Plaintiff ANDREW WEIDEMANN sues the Defendants for damages  
5 which exceed the sum of \$25,000.00, exclusive of fees and costs.

6 3. The Collision occurred in San Marcos, California, in the county of San  
7 Diego.

8 4. Defendants TRINITY HIGHWAY PRODUCTS, LLC and TRINITY  
9 INDUSTRIES, INC. (hereinafter, "the TRINITY Defendants"), either directly or through  
10 their agents, servants or employees, designed, manufactured, marketed, distributed and/or  
11 sold, the TRINITY Guardrail in the State of California. Defendants derive substantial  
12 revenue from the use of the TRINITY Guardrail on streets, freeways, and highways in the  
13 State of California. As such, Defendants expected or should have expected that their  
14 business activities could or would subject them to legal action in the State of California.  
15 Accordingly, Plaintiff contends that this Court may rightfully exercise jurisdiction, and  
16 venue is proper in this case.

17 5. The CITY OF SAN MARCOS, COUNTY OF SAN DIEGO, and STATE  
18 OF CALIFORNIA (hereinafter, "the Government Defendants") negligently installed,  
19 placed, and/or repaired the TRINITY Guardrail on city, county, and state roads for use by  
20 the public. The Government Defendants also negligently designed traffic control  
21 measures intended to protect drivers such as Plaintiff in the city, county, and state of the  
22 Collision. All of the Government Defendants are entities within the State of California.

23 6. Venue is proper in the Superior Court for San Diego County, California  
24 because Defendants CITY OF SAN MARCOS and COUNTY OF SAN DIEGO reside in  
25 San Diego County, California.

26 **THE PARTIES**

27 7. At all relevant times, Plaintiff ANDREW WEIDEMANN was a resident of  
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1 San Marcos, California.

2 8. Defendant TRINITY HIGHWAY PRODUCTS, LLC, is a limited liability  
3 company organized under the laws of the State of Delaware with its principal place of  
4 business in Dallas, Texas. Trinity Highway Products, LLC may be served with process  
5 by serving its registered agent for service of process: C T Corporation System, 1999  
6 Bryan Street - Suite 900, Dallas, TX 75201-3136.

7 9. Defendant TRINITY INDUSTRIES, INC. is a corporation organized under  
8 the laws of the State of Delaware with its principal place of business in Dallas, Texas.  
9 Trinity Industries, Inc. may be served with process by serving its registered agent for  
10 service of process: C T Corporation System, 1999 Bryan Street - Suite 900, Dallas, TX  
11 75201-3136.

12 10. Defendant CITY OF SAN MARCOS is a city in the County of San Diego  
13 and the State of California. Defendant CITY OF SAN MARCOS is located at 1 Civic  
14 Center Drive, San Marcos, California 92069.

15 11. Defendant COUNTY OF SAN DIEGO is a county in the State of  
16 California. Defendant COUNTY OF SAN DIEGO is located at 1600 Pacific Highway,  
17 San Diego, California 92101.

18 12. DEFENDANT STATE OF CALIFORNIA is located in Sacramento,  
19 California.

20 13. At all relevant times, the TRINITY Defendants designed, manufactured,  
21 tested, labeled, marketed, distributed and sold the TRINITY Guardrail, either directly or  
22 indirectly, to consumers throughout the United States, including the guardrail which is the  
23 subject of this complaint.

24 14. At all relevant times, the Government Defendants negligently installed or  
25 permitted to be installed the TRINITY Guardrail on city, county, and state roads for use  
26 by the public, including the guardrail which is the subject of this complaint. The  
27 Government Defendants also supplied the TRINITY Guardrail, either directly or  
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1 indirectly, to the general public through the installation along public streets.

2 **FACTUAL BACKGROUND**

3 15. On or about June 22, 2015 around 2 a.m., Plaintiff ANDREW  
4 WEIDEMANN was travelling southbound in his Chevrolet Impala on South Twin Oaks  
5 Valley Road, south of Craven Road and north of San Elijo Road, in San Marcos,  
6 California.

7 16. At that time, Plaintiff's vehicle careened into the end of the TRINITY  
8 Guardrail, which penetrated Plaintiff's vehicle and sliced through Plaintiff's legs.

9 17. After hitting the TRINITY Guardrail, Plaintiff's vehicle continued down  
10 the adjacent embankment, which had an approximate depth of 70 feet and an approximate  
11 length of 289 feet, until his vehicle stopped.

12 18. As a result of the Collision, Plaintiff suffered severe injuries, including but  
13 not limited to the resulting amputation of his right leg below the knee and significant  
14 injury to his left leg such that he may be permanently immobile. But for the TRINITY  
15 Guardrail, Plaintiff would not have suffered these injuries.

16 19. Trinity Industries, Inc. is the parent corporation of Trinity Highway  
17 Products, LLC and as such controls Trinity Highway Products, LLC. (Again, collectively  
18 referred to herein as "TRINITY".)

19 20. TRINITY is in the business of manufacturing and selling various highway  
20 safety and construction products for use across the United States. TRINITY specifically  
21 manufactures and sells the ET-Plus guardrail end terminal ("ET-Plus") under an  
22 exclusive licensing agreement from Texas A & M University.

23 21. The ET-Plus unit is commonly referred to as a "head" or "end terminal"  
24 and when used in conjunction with the standard "W-beam" style guardrail seen  
25 throughout the roads and highways of America is designed to safely absorb and dissipate  
26 the energy of a vehicular impact.

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1           22.     Upon impact, the guardrail is designed to be extruded through the head and  
2 flattened out into a ribbon, thus absorbing the majority of the collision energy.

3           23.     The ET-Plus, along with each and every other product used on the National  
4 Highway System throughout the United States, must undergo testing to determine and  
5 validate crashworthiness before the product may be placed on the National Highway  
6 System or on the roads of any state.

7           24.     The Federal Highway Administration, a division of the United States  
8 Government under the U.S. Department of Transportation, along with other state and  
9 federal organizations, are charged with establishing the crashworthiness criteria for  
10 products such as the ET-Plus.

11           25.     The respective Department of Transportation ("DOT") of each state must  
12 approve any product installed on its roadways. Further, each highway project is governed  
13 by contracts issued by that DOT. These documents typically require that any products  
14 installed on the state's highways be both previously approved by the DOT and compliant  
15 with National Cooperative Highway Research Program Report 350 ("NCHRP 350"), if  
16 tested prior to January 1, 2011, or tested using the Manual for Assessing Safety Hardware  
17 ("MASH"), if presented for testing after that date. Products previously accepted under  
18 NCHRP 350 do not need to be re-tested unless, of course, the product is changed.

19           26.     NCHRP 350, Recommended Procedures for the Safety Performance  
20 Evaluation of Highway Features, establishes a performance range on several criteria that  
21 guardrail end terminals must satisfy through as many as seven (7) different tests to  
22 be deemed safe and reliable for installation. The prime contractor who submits a  
23 winning bid on a project must sign contracts agreeing with the DOT to install only state-  
24 approved, NCHRP 350 or MASH-compliant products.

25           27.     California has an Approved Products List for the product at issue.  
26 TRINITY manufactures and sells guardrail and end terminals under the names ET-2000  
27 Plus, ET-Plus and ET-31 among others. The ET-Plus, also known as ET-2000 Plus, was  
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1 approved by NCDOT and placed on NCDOT's Approved List for End Terminal. The  
2 version of the ET-Plus approved by NCDOT remains on NCDOT's current Approved  
3 Product List. NCDOT has not approved any other version of the ET-Plus.

4 28. Once a product is approved for use along the National Highway System or  
5 the roadways of a particular state, its design specifications cannot be altered; or if altered,  
6 the product must undergo additional testing and approval prior to its placement on the  
7 roadways of that state or the National Highway System.

8 29. Beginning sometime between 2000 and 2005, a different or altered  
9 ET-Plus started appearing along the National Highway System and on the roads in the  
10 subject states that had a modified, revised or altered "head" manufactured with an exit  
11 gap of approximately 1.0 inches rather than approximately 1.5 inches as originally tested,  
12 approved, and manufactured.

13 30. Beginning in early 2005, yet another different or altered ET-Plus started  
14 appearing along the National Highway System and on the roads in the subject states that  
15 had a modified, revised or altered "head" was manufactured with a 4" feeder chute (as  
16 opposed to the prior approved 5" feeder chute) and a shorter overall height.

17 31. In addition to the above, due to the shortened height, the feeder rails are  
18 actually inserted into the head .75" rather than being welded flush to it as originally  
19 designed and approved, thus drastically reducing the overall space of the feeder chute.  
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21 32. The ET-Plus, as modified, revised or altered in 2005 and at issue in this  
22 case, does not allow the guardrail to feed properly through the chute due to the reduced  
23 internal area of the head itself causing the guardrail to "throat lock" in the head during  
24 impact.

25 33. Once "throat lock" occurs, as is the case in this action, the ET-Plus system  
26 violently stops or redirects the vehicle in a manner causing serious injury or deaths -  
27 often by impalement.  
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1 34. Based on information and belief, Defendants, at all times relevant hereto,  
2 knew of the dangerous conditions created by its unapproved, ET-Plus system, as literally  
3 hundreds of thousands of these unapproved, secretly, inherently dangerous ET-Plus  
4 systems have been in use across the country for several years preceding the incident at  
5 issue in this lawsuit. Based upon information and belief, the TRINITY Defendants never  
6 officially notified or petitioned the Federal Highway Administration, California's DOT,  
7 or any branch or unit of any federal or state government for approval or consideration of  
8 the feeder chute changes as described above.

9 35. To make matters worse, the TRINITY Defendants knew or should have  
10 known there was a problem with their unilateral, unapproved modification of its guardrail  
11 and end terminal. Specifically, the TRINITY Defendants twice petitioned the Federal  
12 Highway Administration ("FHWA") for modifications to other components of the overall  
13 ET-Plus system, once in September of 2005 and then again in August of 2007. These  
14 September 2005 and August 2007 requests dealt with components sold with the ET-Plus  
15 and their configuration, and nowhere in these design changes do the TRINITY  
16 Defendants mention the reduced feeder chute size or any other changes to the ET-Plus  
17 head.

18 36. Based upon information and belief, TRINITY never officially notified or  
19 petitioned the Federal Highway Administration, the California DOT, or any branch or unit  
20 of any federal or state government for approval or consideration of the feeder chute  
21 changes as described above.

22 37. None of the Government Defendants ever independently examined or tested  
23 the TRINITY Guardrails before installing them on city, county, and/or state roads.

#### 24 PLAINTIFF'S INJURIES

25  
26 38. Plaintiff's collision with and impalement by the TRINITY Guardrail caused  
27 severe soft tissue damage to both lower legs, resulting in the amputation of his right leg  
28 below the knee. Several bones were broken and/or crushed and Plaintiff suffered



1 widespread soft tissue damage, which will require an extensive healing period, including  
2 the use of wound vacuums on both the amputated leg and the left leg. Plaintiff's left leg  
3 was severely damaged as well, requiring external fixation due to the extent of soft tissue  
4 damage. The left leg suffered a complete dislocation of the talus (ankle bone) and his  
5 tibia was crushed and fractured.

6 39. On October 28, 2015, Plaintiff underwent bone grafting surgery, whereby  
7 Plaintiff's surgeons removed bone from Plaintiff's pelvic bone and grated it into his tibia.

8 40. These injuries continue to occur. Plaintiff must learn to live without his  
9 right leg and with a severely damaged left leg. Plaintiff has suffered past and future  
10 mental anguish, physical disfigurement and impairment, past lost wages, loss of earning  
11 capacity, and past and future medical bills.

12 **GENERAL ALLEGATIONS**

13 **COUNT I**

14 **(Strict Liability - Defect in Design)**

15 41. Plaintiffs incorporate and reallege all preceding paragraphs into Count I of  
16 this Complaint.

17 42. At all times material hereto, Defendants engaged in the business of  
18 designing, developing, manufacturing, testing, packaging, labeling, distributing,  
19 marketing, selling, supplying, and/or distributing, the TRINITY Guardrail with which  
20 Plaintiff collided, which is unreasonably and dangerously defective in its design,  
21 manufacture, and as marketed.

22 43. The TRINITY Guardrail, when operating as intended and expected, should  
23 minimize or eliminate serious injuries to drivers who collide with it at high speeds, such  
24 as Plaintiff. The TRINITY Guardrail system was installed along city, county, and state  
25 roads for the intended use and/or reasonably foreseeable misuse as a collision point for  
26 vehicles careening off the roads or otherwise losing control. If operating as intended, the  
27 TRINITY Guardrail should minimize any serious injury to vehicle passengers from such a  
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1 collision. However, when Plaintiff collided with the TRINITY Guardrail, the guardrail  
2 malfunctioned and caused injuries that were substantially greater and far more serious  
3 than he would have suffered if the guardrail operated as expected and intended.

4 44. The defective nature of the TRINITY Guardrail was a proximate and  
5 producing cause of Plaintiff's injuries and damages, thus rendering Defendants strictly  
6 liable. The TRINITY Guardrail as originally designed and constructed and/or as  
7 modified, revised or altered was in substantially the same condition on the date of the  
8 Collision as it was when it was originally placed into the stream of commerce and  
9 installed by Defendants or by a contractor at their instruction and direction.

10 45. At all relevant times, Defendants expected the TRINITY Guardrail to reach,  
11 and it did reach, consumers in the State of California, including Plaintiff, without  
12 substantial change in the condition in which it was sold.

13 46. The TRINITY Guardrail, which is the subject matter of this suit, was  
14 defective in the following respects:

- 15 a. The TRINITY Guardrail was defectively designed and manufactured and  
16 did not operate and perform as intended;
- 17 b. The modified, revised or altered TRINITY Guardrail's revised or altered  
18 "head" was manufactured with an exit gap of approximately 1.0 inches  
19 rather than approximately 1.5 inches, as originally tested, approved, and  
20 manufactured, was defectively designed and manufactured and did not  
21 operate and perform as intended;
- 22 c. The TRINITY Guardrail had a revised or altered 'head' was manufactured  
23 with a 4" feeder chute (as opposed to the prior approved 5" feeder chute)  
24 and a shorter overall height that was defectively designed and manufactured  
25 and did not operate and perform as intended;
- 26 d. The feeder rails were inserted into the head 0.75" rather than being welded  
27 flush to it, as originally designed and approved, which drastically reduced  
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1 the overall space of the feeder chute and prevented the modified, revised or  
2 altered guardrail from feeding properly through the chute due to the reduced  
3 internal area of the head itself. This caused the modified, revised or altered  
4 guardrail to "throat lock" in the head during impact. This modification  
5 rendered the TRINITY guardrail and end terminal to be defectively  
6 designed and manufactured and did not operate and perform as intended;

7 e. Once "throat lock" occurs, as is the case in this action, the ET-Plus system  
8 violently stops or redirects the vehicle in a manner causing serious injury or  
9 deaths -- often by impalement. This modification rendered the TRINITY  
10 guardrail and end terminal to be defectively designed and manufactured and  
11 did not operate and perform as intended;

12 f. The TRINITY Guardrail was defective as marketed in that the advertising  
13 and marketing campaigns and programs undertaken by TRINITY as to the  
14 safety features of the product failed to warn consumers and the general  
15 public of its dangerous conditions as described more fully herein; and

16 g. The TRINITY Guardrail was generally defective in its design, manufacture,  
17 marketing, assembly, testing and warnings because it failed to provide  
18 adequate stability, because of its small width and wheels and because it was  
19 furnished without adequate warning regarding its stability and use.

20  
21 47. It was entirely foreseeable and well known by Defendants that collisions  
22 involving the TRINITY Guardrail, such as described herein, would on occasion take  
23 place during its normal and ordinary use.

24 48. At the time of the Collision, the TRINITY Guardrail was defective and  
25 unreasonably dangerous. As a proximate result, the guardrail penetrated the vehicle and  
26 impaled Plaintiff, causing massive injuries that include, but not limited to, the severing of  
27 one of Plaintiff's legs and severely handicapping the other leg.

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1           49. The ordinary reasonable consumer would expect that the intended use  
2 and/or reasonably foreseeable misuse of the TRINITY Guardrail is to act as a collision  
3 point for vehicles careening off the roads or otherwise losing control. The ordinary  
4 reasonable consumer would expect that the purpose of the TRINITY Guardrail is to  
5 minimize or eliminate serious injuries to drivers, such as Plaintiff, colliding with the  
6 guardrail at high speeds. Therefore, because the TRINITY Guardrail caused greater  
7 injury to Plaintiff than would have been suffered absent any guardrail at all, the TRINITY  
8 Guardrail did not perform as safely as an ordinary reasonable consumer would have  
9 expected it to perform when used or misused in an intended or reasonably foreseeable  
10 way.

11           50. Moreover, a reasonable alternative design to the TRINITY Guardrail  
12 existed in the marketplace at that time that would have prevented the exact injury suffered  
13 by Plaintiff. In fact, TRINITY had in its possession and/or had actual knowledge of the  
14 exact specifications for the reasonable alternative design yet purposefully deviated from  
15 those specifications in its design of the TRINITY Guardrail, despite the increased  
16 probability and gravity of injury that could result from such deviation. The reasonable  
17 alternative design was economical and technologically feasible at the time the TRINITY  
18 Guardrail left the control of Defendants by application of existing or reasonably  
19 achievable scientific knowledge. The safer alternative design would have prevented or  
20 significantly reduced the risk of the Plaintiff's injuries and damages, without substantially  
21 impairing the product's utility.

22           51. All of this conduct was known by Defendants prior to the design, sale,  
23 supply, and/or modification of that design and sale of the TRINITY Guardrail, and  
24 proximately caused the injuries and damages to Plaintiff.

25           52. As a further proximate result of the defective design of the TRINITY  
26 Guardrail, Plaintiff suffered debilitating physical pain and mental suffering; was required  
27 to undergo surgeries and rehabilitation, incurred continuing hospital, medical, nursing,  
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1 and pharmaceutical expenses therefrom; suffered pain and suffering (past and future),  
2 mental anguish (past and future), emotional distress, anxiety, depression and disability,  
3 loss of mobility, loss of independence, loss of past wages, loss of earning capacity,  
4 medical bills, physical disfiguration and impairment, and lost quality of life, and all of  
5 these injuries are permanent and continuing.

6 WHEREFORE, Plaintiff, ANDREW WEIDEMANN, demands judgment against  
7 the Defendants TRINITY HIGHWAY PRODUCTS, LLC; TRINITY INDUSTRIES,  
8 INC.; CITY OF SAN MARCOS; COUNTY OF SAN DIEGO; and STATE OF  
9 CALIFORNIA for compensatory and punitive damages, as well as all costs of this action  
10 and a trial by jury of all issues.

11 **COUNT II**

12 **(Strict Liability – Manufacturing Defect)**

13 53. Plaintiffs reallege and incorporate all preceding paragraphs into Count II of  
14 this Complaint.

15 54. At all relevant times, Defendants manufactured, designed, distributed,  
16 supplied, and/or sold the TRINITY Guardrail with which Plaintiff collided.

17 55. At all relevant times, Defendants expected the TRINITY Guardrail to reach,  
18 and it did reach, consumers in the State of California, including Plaintiff, without  
19 substantial change in the condition in which it was sold.

20 56. The TRINITY Guardrail that was manufactured, designed, marketed,  
21 distributed, sold, supplied, and/or placed in the stream of commerce by the Defendants  
22 was defective in its manufacture and construction in that, when it left the hands of the  
23 Defendants, it deviated from product specifications and/or applicable federal  
24 requirements for these guardrails, posing a serious risk of injury to the general public,  
25 including Plaintiff.  
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1           57. The TRINITY Guardrail as originally designed and constructed and/or as  
2 modified, revised or altered was in substantially the same condition on the date of the  
3 Collision as it was when it was originally placed into the stream of commerce and  
4 installed by Defendants or by a contractor at their instruction and direction.

5           58. It was foreseeable that ANDREW WEIDEMANN, as a resident of  
6 California driving along roads in California, would encounter the TRINITY Guardrails  
7 installed along those same roads in the course of their intended use and/or reasonably  
8 foreseeable misuse.

9           59. As a direct result of the TRINITY Guardrail's manufacturing defect,  
10 Plaintiff sustained the injuries alleged herein. The manufacturing defects of the  
11 TRINITY Guardrail were a substantial factor in causing Plaintiff's injuries.

12           60. As a further proximate result of the defective manufacturing of the  
13 TRINITY Guardrail, Plaintiff suffered debilitating physical pain and mental suffering;  
14 was required to undergo surgeries and rehabilitation, incurred continuing hospital,  
15 medical, nursing, and pharmaceutical expenses therefrom; suffered pain and suffering  
16 (past and future), mental anguish (past and future), emotional distress, anxiety, depression  
17 and disability, loss of mobility, loss of independence, loss of past wages, loss of earning  
18 capacity, medical bills, physical disfiguration and impairment, and lost quality of life, and  
19 all of these injuries are permanent and continuing.  
20

21           WHEREFORE, Plaintiff, ANDREW WEIDEMANN, demands judgment against  
22 the Defendants TRINITY HIGHWAY PRODUCTS, LLC; TRINITY INDUSTRIES,  
23 INC.; CITY OF SAN MARCOS; COUNTY OF SAN DIEGO; and STATE OF  
24 CALIFORNIA for compensatory and punitive damages, as well as all costs of this action  
25 and a trial by jury of all issues.

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COUNT III

(Strict Liability - Failure to Warn)

61. Plaintiffs reallege and incorporate all preceding paragraphs into Count III of this Complaint.

62. At all relevant times, Defendants manufactured, designed, distributed, supplied, and/or sold the TRINITY Guardrail with which Plaintiff collided.

63. At all relevant times, Defendants expected the TRINITY Guardrail to reach, and it did reach, consumers in the State of California, including Plaintiff, without substantial change in the condition in which it was sold.

64. The TRINITY Guardrail that was manufactured, designed, marketed, distributed, sold, supplied, and/or placed in the stream of commerce by the Defendants was defective in its manufacture and construction in that, when it left the hands of the Defendants, it deviated from product specifications and/or applicable federal requirements for these guardrails, posing a serious risk of injury to the general public, including Plaintiff.

65. Based on information and belief, the TRINITY Defendants, at all times relevant hereto, knew of the dangerous conditions created by its unapproved, ET-Plus system, as literally hundreds of thousands of these unapproved, secretly, inherently dangerous ET-Plus systems have been in use across the country for several years preceding the incident at issue in this lawsuit. Based upon information and belief, the TRINITY Defendants never officially notified or petitioned the Federal Highway Administration, California's DOT, or any branch or unit of any federal or state government for approval or consideration of the feeder chute changes as described above.

66. To make matters worse, the TRINITY Defendants knew or should have known there was a problem with their unilateral, unapproved modification of its guardrail

1 and end terminal. Specifically, the TRINITY Defendants twice petitioned the Federal  
2 Highway Administration ("FHWA") for modifications to other components of the overall  
3 ET-Plus system, once in September of 2005 and then again in August of 2007. These  
4 September 2005 and August 2007 requests dealt with components sold with the ET-Plus  
5 and their configuration, and nowhere in these design changes do the TRINITY  
6 Defendants mention the reduced feeder chute size or any other changes to the ET-Plus  
7 head.

8           67. All of this information was known or knowable in light of the scientific  
9 knowledge that was generally accepted in the scientific community at the time of  
10 manufacture, distribution, and sale. The TRINITY Defendants, as manufacturers of the  
11 TRINITY Guardrail, are held to the level of knowledge of experts in the field of that type  
12 of guardrail, and had a duty to warn their consumers, the relevant government entities,  
13 and the general public of the dangers associated with the guardrail and failed to do so.

14           68. The inherent risks of the TRINITY Guardrail as manufactured presented a  
15 substantial danger when a vehicle collided with the TRINITY Guardrail. As described  
16 above, vehicular collision with the product is the intended use and/or a reasonably  
17 foreseeable misuse of the TRINITY Guardrail.

18           69. Despite possessing actual and constructive knowledge of the hazards and  
19 risks inherent in the TRINITY Guardrail, the TRINITY Defendants failed to adequately  
20 warn or instruct of the potential risks.

21           70. Given that a safer alternative design of the TRINITY Guardrail existed and  
22 was prevalent on California roads, an ordinary consumer would not have recognized the  
23 potential risks that were unique to the TRINITY Guardrail. Indeed, an ordinary consumer  
24 would not even recognize that the TRINITY Guardrail differed in any respect from  
25 correctly-functioning guardrails.

26           71. Furthermore, the Government Defendants should have known of the  
27 dangerous condition of the TRINITY Guardrails they had installed in San Marcos,  
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1 California, by October 20, 2014, at the very latest. On this date, a federal jury in Texas  
2 found the TRINITY Defendants liable for \$525 million in a related qui tam whistleblower  
3 action (hereinafter, "The Qui Tam Verdict"). In that action, the TRINITY Defendants  
4 were found liable for their failure to manufacture TRINITY Guardrails in accordance  
5 with approved dimensions and regulations and their lack of disclosure of the same, all of  
6 which resulted in deaths and injuries such as Plaintiff's.

7 72. As of the date of The Qui Tam Verdict, the Government Defendants  
8 acquired a duty to warn the public of the dangerous condition of the TRINITY Guardrails  
9 they had installed along public streets, especially because the Government Defendants  
10 were the only ones who knew exactly where these defective guardrails were actually  
11 installed in their respective jurisdictions. The Government Defendants knew for eight  
12 months preceding the Collision that the TRINITY Guardrails were dangerous, but did  
13 nothing. The Government Defendants' failure to warn about the dangerous condition of  
14 the guardrails left the public, including Plaintiff, completely unaware as to the danger.

15 73. As the direct and proximate result of Defendants' failure to warn of the  
16 defective condition of the TRINITY Guardrails, Plaintiff ANDREW WEIDEMANN  
17 suffered serious physical injuries as described herein. The lack of sufficient instructions  
18 or warnings was a substantial factor in cause Plaintiff's injuries as described herein.

19 74. As a further proximate result of Defendants' failure to warn of the defective  
20 condition of the TRINITY Guardrail, Plaintiff suffered debilitating physical pain and  
21 mental suffering; was required to undergo surgeries and rehabilitation, incurred  
22 continuing hospital, medical, nursing, and pharmaceutical expenses therefrom; suffered  
23 pain and suffering (past and future), mental anguish (past and future), emotional distress,  
24 anxiety, depression and disability, loss of mobility, loss of independence, loss of past  
25 wages, loss of earning capacity, medical bills, physical disfiguration and impairment, and  
26 lost quality of life, and all of these injuries are permanent and continuing.

27  
28 WHEREFORE, Plaintiff, ANDREW WEIDEMANN, demands judgment against

1 the Defendants TRINITY HIGHWAY PRODUCTS, LLC; TRINITY INDUSTRIES,  
2 INC.; CITY OF SAN MARCOS; COUNTY OF SAN DIEGO; and STATE OF  
3 CALIFORNIA for compensatory and punitive damages, as well as all costs of this action  
4 and a trial by jury of all issues.

5 COUNT IV

6 (Negligence)

7 75. Plaintiffs incorporate and reallege all preceding paragraphs into Count IV  
8 of this Complaint.

9 76. Defendants have a duty to exercise ordinary care in the design, testing,  
10 marketing and distribution of the TRINITY Guardrail to ensure that it was not  
11 unreasonably dangerous for its intended and foreseeable use on the roads of California.  
12 Defendants knew, or in the exercise of ordinary care should have known, that the  
13 impact head as re-designed in approximately 2005 was defective and unreasonably  
14 dangerous to members of the driving public, including Plaintiff. Defendants breached  
15 their duty of ordinary care by placing the design and end terminal into the stream of  
16 commerce in a defective and unreasonably dangerous condition and by certifying it as  
17 NCHRP 350 compliant. This negligence on the part of TRINITY was a proximate  
18 cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the  
19 TRINITY Guardrail and the guardrail impaled him.

20  
21 77. The TRINITY Defendants are the manufacturers of the original and/or  
22 modified, revised or altered guardrail and impact head system installed by a contractor  
23 at the location in question and in place at the time of the incidents made the basis of  
24 this lawsuit. It was foreseeable to Defendants that collisions like Plaintiff's would  
25 occur between vehicles and the TRINITY Guardrails placed along the roads of  
26 California. TRINITY defectively designed, manufactured, assembled, marketed  
27 and/or distributed the original and/or modified, revised or altered guardrail and end  
28 terminal system when it designed the product in approximately 2005 in a manner that

1 prevents the impact head system from operating as intended. Defendants' breach of this  
2 duty was a producing cause and cause-in-fact of the injuries sustained by Plaintiff when  
3 his car impacted the original and/or modified, revised or altered guardrail and end  
4 terminal.

5 78. The incidents made the basis of this lawsuit resulted from the negligence of  
6 the TRINITY Defendants. The TRINITY Defendants' conduct constituted negligence,  
7 and such negligent conduct was a proximate cause of the incident, injuries, and damages  
8 made the basis of this lawsuit. Specifically, TRINITY failed to design, manufacture,  
9 market, test, and inspect its original and/or modified, revised or altered guardrail and end  
10 terminal, and warn the respective state's DOT and the public of dangers associated with  
11 it.

12 79. More specifically, TRINITY had a duty to design, manufacture and market  
13 original and/or modified, revised or altered guardrail and end terminal that was safe for  
14 use. In their design, manufacture and marketing of the original and/or modified, revised  
15 or altered guardrail and end terminal in question, TRINITY breached these duties in the  
16 following respects, without limitation:

- 17 a. That upon impact, the ET-Plus unit "head" or "end terminal" used in  
18 conjunction with the standard "W-beam" style guardrail and end terminal  
19 safely absorbs and dissipates the energy of a vehicular impact;
- 20 b. That upon impact, the guardrail extrudes through the head and flattens  
21 out into a ribbon, thus absorbing the majority of the collision energy;
- 22 c. That upon impact, the guardrail is crashworthy before the product may be  
23 placed on the National Highway System or on the roads of any state;
- 24 d. To not revise or alter the guardrail and end terminal once previously  
25 approved by the DOT and compliant with National Cooperative Highway  
26 Research Program Report 350 ("NCHRP 350"), if tested prior to January  
27 1, 2011, or tested using the Manual for Assessing Safety Hardware  
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("MASH"), if presented for testing after that date.

- e. Once, approved for use along the National Highway System or and on the roads in the subject states, to not alter its design specifications, or if altered, conduct additional testing and approval prior to its placement on the roadways of that National Highway System and on the roads in the subject states.
- f. Not to install between 2000 and 2005, a different or altered ET-Plus started appearing along the National Highway System and on the roads in the subject states a revised or altered "head" was manufactured with an exit gap of approximately 1.0 inches rather than approximately 1.5 inches as originally tested, approved, and manufactured.
- g. Not to install in early 2005, yet another different or altered ET-Plus started appearing along the National Highway System and on the roads in the subject states; in particular, a revised or altered 'head' was manufactured with a 4" feeder chute (as opposed to the prior approved 5" feeder chute) and a shorter overall height. TRINITY had a duty to test to make sure that that shortened height, causing the feeder rails are actually inserted into the head .75" rather than being welded flush to it as originally designed and approved, did not reduce the overall space of the feeder chute.
- h. TRINITY had a duty to officially notify or petition the Federal Highway Administration, the subject state's DOT or any branch or unit of any federal or state government for approval or consideration of the guardrail, end terminal and feeder chute changes as described above.
- i. To test the ET-Plus, as in 2005 and at issue in this case, to make sure it does allow the guardrail to feed properly through the chute due to the reduced internal area of the head itself causing the guardrail to "throat lock"

1 in the head during impact.

2 j. To test to insure that "throat lock" does not occur, and if it does as is the  
3 case in this action, that the ET-Plus system does not violently stop or  
4 redirect the vehicle in a manner causing serious injury or deaths – often by  
5 impalement.

6 80. The incidents made the basis of this lawsuit also result from the negligence  
7 of the Government Defendants. The Government Defendants' conduct constituted  
8 negligence, and such negligent conduct was a proximate cause of the incident, injuries,  
9 and damages made the basis of this lawsuit.

10 81. More specifically, the Government Defendants had a duty to: safely and  
11 appropriately place and/or install guardrails along public streets in such a manner as to  
12 manage undue risks to drivers such as Plaintiff; design traffic control measures in such a  
13 manner as to protect drivers such as Plaintiff; and design and/or test a crashworthy  
14 guardrail system for public streets. The Government Defendants breached these duties in  
15 the following respects, without limitation:

16 a. By installing any guardrail at the location where Plaintiff collided with the  
17 TRINITY Guardrail, as the slope of the adjacent embankment was  
18 approximately 4:1 (*length: depth*) and was not severe enough to require any  
19 guardrail. The California Division of Traffic Operations has established  
20 uniform practices and guidance for the installation of guardrails, advising  
21 government entities and contractors that the risks associated with a  
22 guardrail outweigh the benefits when the slope of the adjacent  
23 embankment's length to depth is less severe than 3:1. The Government  
24 Defendants knew these uniform practices at the time of the installation of  
25 the TRINITY Guardrail at the location at issue and installed the guardrails  
26 anyways, despite the fact that the slope was only 4:1 and did not require any  
27 guardrail.  
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- b. By failing to test the crashworthiness of the TRINITY Guardrail system before installing said system onto public streets; and
- c. By otherwise failing to adequately design traffic control measures along South Twin Oaks Valley Road in such a manner as to prevent the Plaintiffs injuries.

82. Plaintiff would show that one, some, or all of the above foregoing acts and/or omissions, or others on the part of Defendants, constitute negligence and proximately caused Plaintiff's injuries and damages. As a producing and proximate result of Defendants' negligence, Plaintiff has sustained injuries and damages.

83. As a further proximate result of Defendants' negligence, Plaintiff suffered debilitating physical pain and mental suffering; was required to undergo surgeries and rehabilitation, incurred continuing hospital, medical, nursing, and pharmaceutical expenses therefrom; suffered pain and suffering (past and future), mental anguish (past and future), emotional distress, anxiety, depression and disability, loss of mobility, loss of independence, loss of past wages, loss of earning capacity, medical bills, physical disfiguration and impairment, and lost quality of life, and all of these injuries are permanent and continuing.

WHEREFORE, Plaintiff, ANDREW WEIDEMANN, demands judgment against the Defendants TRINITY HIGHWAY PRODUCTS, LLC; TRINITY INDUSTRIES, INC.; CITY OF SAN MARCOS; COUNTY OF SAN DIEGO; and STATE OF CALIFORNIA for compensatory and punitive damages, as well as all costs of this action and a trial by jury of all issues.

**COUNT V**  
**(FRAUDULENT CONCEALMENT)**  
*Against the TRINITY Defendants*

1           84. Plaintiffs incorporate and reallege all preceding paragraphs into Count V of  
2 this Complaint.

3           85. The TRINITY Defendants, through their affirmative misrepresentations and  
4 omissions, actively concealed from Plaintiff and the general public the true risks  
5 associated with the TRINITY Guardrail. The TRINITY Defendants intended to deceive  
6 Plaintiff and the general public by concealing the true risks associated with the TRINITY  
7 Guardrail.

8           86. The true risk associated with the TRINITY Guardrail was an important fact  
9 known only to the TRINITY Defendants that Plaintiff could not have discovered.

10           87. As a result of the actions of the TRINITY Defendants, no ordinary  
11 consumer could have known or been aware of these risks, and could not reasonably know  
12 or have learned through reasonable diligence that there was a risk of impalement,  
13 serious injuries and deaths if the TRINITY Guardrail was struck head-on. Plaintiff did  
14 not know of the TRINITY Defendants' concealment and was unwittingly exposed to  
15 those risks alleged herein. Those risks and the resulting injuries were the direct and  
16 proximate result of the TRINITY Defendants' acts and omissions.

17           88. The TRINITY Defendants were under duty to disclose the true character,  
18 quality and nature of the original and/or modified, revised or altered guardrail and end  
19 terminal because this was non-public information which the TRINITY Defendants had  
20 and of which they continued to have exclusive control, and because the TRINITY  
21 Defendants knew that this information was not available to those using the highways  
22 and byways where the TRINITY Guardrail had been installed.

23           89. TRINITY had the ability to and did spend enormous amounts of money in  
24 furtherance of their purpose marketing and promoting a profitable original and modified,  
25 revised or altered guardrail, notwithstanding the known risks. In the pursuit of financial  
26 profit, the TRINITY Defendants intended to deceive Plaintiff and the general public by  
27 concealing the true risks associated with the TRINITY Guardrail. Plaintiff was unaware  
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1 of and could not have discovered the nature, extent and identity of these risks, and  
2 reasonably relied on the TRINITY Defendants' representations by the placement of the  
3 product itself that it was there to protect, minimize and possibly prevent serious injuries.  
4 As a result, Plaintiff suffered serious physical injuries. The TRINITY Defendants'  
5 fraudulent concealment was a substantial factor in causing Plaintiff's harm.

6 90. As a further proximate result of Defendants' fraudulent concealment of the  
7 defective condition of the TRINITY Guardrail, Plaintiff suffered debilitating physical  
8 pain and mental suffering; was required to undergo surgeries and rehabilitation, incurred  
9 continuing hospital, medical, nursing, and pharmaceutical expenses therefrom; suffered  
10 pain and suffering (past and future), mental anguish (past and future), emotional distress,  
11 anxiety, depression and disability, loss of mobility, loss of independence, loss of past  
12 wages, loss of earning capacity, medical bills, physical disfiguration and impairment, and  
13 lost quality of life, and all of these injuries are permanent and continuing.

14 WHEREFORE, Plaintiff, ANDREW WEIDEMANN, demands judgment against  
15 the Defendants TRINITY HIGHWAY PRODUCTS, LLC; TRINITY INDUSTRIES,  
16 INC.; CITY OF SAN MARCOS; COUNTY OF SAN DIEGO; and STATE OF  
17 CALIFORNIA for compensatory and punitive damages, as well as all costs of this action  
18 and a trial by jury of all issues.

19  
20 **COUNT VI**

21 **(Dangerous Condition on Public Property - pursuant to Gov. Code § 835)**

22 ***Against the Government Defendants***

23 91. Plaintiffs incorporate and reallege all preceding paragraphs into Count VI  
24 of this Complaint.

25 92. At the time of the Collision, the Government Defendants owned and/or  
26 controlled the TRINITY Guardrail system in place on South Twin Oaks Valley Road, a  
27 public street in San Marcos, where the Collision occurred.

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1           93.     At the time of the Collision, the TRINITY Guardrail system that Plaintiff  
2 hit was in a dangerous condition by virtue of the fact that the TRINITY Guardrail system  
3 caused greater injury than it was designed to prevent due to defects in its manufacture,  
4 design, and lack of warnings. Rather than minimizing or preventing serious injury to  
5 Plaintiff, the guardrail system instead caused otherwise the amputation of one of  
6 Plaintiff's legs and loss of function for the other. In addition, the presence of any  
7 guardrail system at the site of the Collision constituted a dangerous condition of public  
8 property, as described above, because the slope of the adjoining embankment was not  
9 severe enough to require any guardrail. The presence of any guardrail at all created  
10 greater risks than benefits at that particular location.

11           94.     The negligent or wrongful conduct of the Government Defendants or their  
12 employees acting within the scope of their employment created the dangerous condition.  
13 By failing to appropriately test, design, and/or place guardrail systems, the Government  
14 Defendants or their employees exposed drivers such as Plaintiff to severe risks from the  
15 TRINITY Guardrail system.

16           95.     Furthermore, the Government Defendants were on notice as to the  
17 dangerous condition of the TRINITY Guardrails they had installed in San Marcos,  
18 California, by October 20, 2014, at the very latest. On this date, a federal jury in Texas  
19 found the TRINITY Defendants liable for \$525 million in a related qui tam whistleblower  
20 action. In that action, the TRINITY Defendants were found liable for their failure to  
21 manufacture TRINITY Guardrails in accordance with approved dimensions and  
22 regulations and their lack of disclosure of the same, all of which resulted in deaths and  
23 injuries such as Plaintiff's. At this time, the Government Defendants were on notice as  
24 to the dangerous condition of the TRINITY Guardrails they had installed along public  
25 streets. Even worse, the Government Defendants were the only ones who knew if and  
26 where these exact guardrails were actually installed in San Marcos, California. The  
27 Government Defendants had notice from at least October 20, 2014 until June 22, 2015,  
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1 over eight months, that the TRINITY Guardrails were dangerous before the Collision  
2 occurred, but did nothing. The Government Defendants' failure to cure the dangerous  
3 condition of the guardrails left the public, including Plaintiff, completely unaware as to  
4 the danger.

5 96. The Government Defendants were also on notice as to the dangerous  
6 condition of the guardrail at issue because the California Division of Traffic Operations  
7 published uniform practices for the installation of guardrail systems in January of 2012,  
8 stating that the risks associated with a guardrail outweigh the benefits when the slope of  
9 the adjacent embankment's length to depth is less severe than 3:1. The slope adjacent to  
10 the road at the site of the Collision had only a slope of 4:1, making the benefits of any  
11 guardrail at that location less than the perceived risks.

12 97. The dangerous conditions of public property described above were a  
13 substantial factor in causing and a proximate cause of Plaintiff's injuries. Specifically,  
14 Plaintiff suffered debilitating physical pain and mental suffering; was required to undergo  
15 surgeries and rehabilitation, incurred continuing hospital, medical, nursing, and  
16 pharmaceutical expenses therefrom; suffered pain and suffering (past and future), mental  
17 anguish (past and future), emotional distress, anxiety, depression and disability, loss of  
18 mobility, loss of independence, loss of past wages, loss of earning capacity, medical bills,  
19 physical disfiguration and impairment, and lost quality of life, and all of these injuries are  
20 permanent and continuing.

21  
22 WHEREFORE, Plaintiff, ANDREW WEIDEMANN, demands judgment against  
23 the Defendants TRINITY HIGHWAY PRODUCTS, LLC; TRINITY INDUSTRIES,  
24 INC.; CITY OF SAN MARCOS; COUNTY OF SAN DIEGO; and STATE OF  
25 CALIFORNIA for compensatory and punitive damages, as well as all costs of this action  
26 and a trial by jury of all issues.

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**WHEREFORE**, Plaintiff ANDREW WEIDEMANN prays for judgment in his favor and against the Defendants granting the following relief:

(a) Awarding compensatory damages as against the Defendants, in an amount to be determined at trial, but no less than \$10,000,000.

(b) Awarding punitive damages as against the Defendants, in an amount to be determined at trial;

(c) Awarding the costs of this litigation, including attorneys' fees, and interest at the legal rate; and

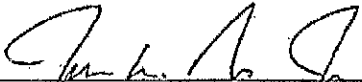
(d) Awarding him other and further relief as to this Court deems just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Dated: February 1, 2016

Respectfully submitted,

  
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