

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Burt Feuerstein and Janet Shalwitz,)	
)	
Plaintiffs,)	2:12-cv-1062 JWS
)	
vs.)	ORDER AND OPINION
)	
The Home Depot, U.S.A., Inc., et al.,)	[Re: Motion at docket 102]
)	
Defendants.)	
)	

I. MOTION PRESENTED

At docket 102 plaintiffs Burt Furestein and Janet Shalwitz (“Plaintiffs”) seek leave to file certain exhibits in electronic format. Defendants The Home Depot, U.S.A., Inc. (“HD”) and Tricam Industries, Inc. (“TI”) (collectively “Defendants”) respond at docket 103. Defendant Trex Company Incorporated (“Trex”) did not respond to the motion. Plaintiffs’ reply is at docket 104. Oral argument was not requested and would not be helpful to the court.

II. BACKGROUND

Plaintiffs’ amended complaint alleges that Burt Fuerstein was injured on May 8, 2011, when a ladder slipped from beneath him. The ladder was manufactured by TI

and sold by HD. Plaintiffs allege that the ladder slipped while set up on decking manufactured by Trex which was also sold by HD. The gravamen of Plaintiffs' several claims is that the ladder slipped because of defective design of the ladder's feet, defective warnings or instructions, and defective design of the Trex decking's surface.

III. DISCUSSION

The motion at docket 102 seeks leave to file three items in electronic format: Exhibit 4-16; a video recording by Plaintiffs' expert Herbert Weller; Exhibit 4-17, a second video recording by Weller; and Exhibit 6, a three-part animation based on the testimony and reports from Plaintiffs' experts. Defendants' response at docket 103 opposes the filing of Exhibit 6, but does not address Exhibits 4-16 and 4-17. This is not to say that Defendants concede the admissibility of testimony or video from Plaintiffs designated experts, Weller and Jay Preston. Defendants have filed separate motions *in limine* directed at Messrs. Weller and Preston.¹ The court's analysis of the motion at docket 102 has been further narrowed by Plaintiffs' withdrawal of their request to file Exhibit 4-17 in electronic format.² Electronic copies of Exhibits 4-16 and 6 have been provided to the court for its review.

An examination of Exhibit 6 shows that it consists of very simple animated displays of events which Weller opines caused the ladder to slide and the fall which Plaintiffs' claim was caused by the slippage. The animations are exceedingly simple and do not go beyond what Weller contends happened. The court agrees with

¹Dockets 84 and 86.

²Doc. 110.

