

1 HAGENS BERMAN SOBOL SHAPIRO LLP  
 2 1918 Eighth Avenue, Suite 3300  
 3 Seattle, WA 98101  
 Telephone: 206.623.7292  
 Facsimile: 206.623.0594

K&L GATES LLP  
 Four Embarcadero Center, Suite 1200  
 San Francisco, CA 94111-5994  
 Telephone: 415.882.8200  
 Facsimile: 415.822-8220

4 Steve W. Berman (*pro hac vice*)  
steve@hbsslaw.com  
 5 Tyler S. Weaver (*pro hac vice*)  
tyler@hbsslaw.com  
 6 Robert F. Lopez (*pro hac vice*)  
robl@hbsslaw.com

Patrick J. Perrone (*pro hac vice*)  
patrick.perrone@klgates.com  
 Todd L. Nunn (*pro hac vice*)  
todd.nunn@klgates.com

Attorneys for Defendant Trex Company, Inc.

7 Attorneys for Select Plaintiffs and Lead Counsel  
 8 for the Proposed Class

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

13 DEAN MAHAN, GRETCHEN SILVERMAN, J.  
 14 STEPHEN TISDALE, STEVEN MCKENNA,  
 THOMAS SCHAUPPNER, MARJORIE  
 15 ZACHWIEJA, JOHN FORCELLA, SHEILA  
 SHAPIRO, SABRINA W. HASS and DR.  
 16 LANNY W. HASS, AMY BIONDI-HUFFMAN,  
 and BRIAN HATHAWAY, on behalf of  
 themselves and all others similarly situated,

Case No. CV 09-00670-JSW

**STIPULATION AND ~~PROPOSED~~  
 ORDER REQUESTING REVISION OF  
 CASE SCHEDULE TO ALLOW PARTIES  
 TO MEDIATE**

17 Plaintiffs,

18 vs.

19 TREX COMPANY, INC., a Delaware  
 20 corporation,

21 Defendant.

1 Per the Civil Standing Orders of the Honorable Jeffrey S. White, plaintiffs Dean Mahan,  
2 Gretchen Silverman, J. Stephen Tisdale, Steven McKenna, Thomas Schauppner, Marjorie Zachwieja,  
3 John Forcella, Sheila Shapiro, Sabrina W. Hass and Dr. Lanny W. Hass, Amy Biondi-Huffman, and  
4 Brian Hathaway, and defendant Trex Company, Inc. (“Trex”), by and through their respective  
5 counsel of record, stipulate and respectfully ask the Court to defer briefing, hearing, and decision on  
6 plaintiffs’ motion for class certification, and to defer hearing and decision on Trex’s motion to  
7 transfer venue, so that the parties can attempt in good faith to settle this matter via mediation.

8 Currently, as reflected in the Court’s order filed on December 13, 2011 (Dkt. No. 216), which  
9 extended the previous class-certification schedule per the stipulated request of the parties due to the  
10 unavailability of two Trex 30(b)(6) deposition witnesses until December 29, 2011, deadlines related  
11 to class certification are as follows:

12 Motion for class certification: January 20, 2012;

13 Opposition to class certification: February 20, 2012, with a reservation of the right to  
14 seek an extension of this deadline if needed to conduct discovery for issues raised in  
15 the Motion for Class Certification;

16 Reply in support of class certification: March 5, 2012, with potential extension if  
17 Opposition date is extended;

18 Hearing on motion for class certification: March 23, 2012, at 9:00 a.m.

19 In addition, currently pending and set for hearing at 9:00 a.m. on March 16, 2012, is  
20 Trex’s opposed motion to transfer this matter to the Western District of Virginia. That motion  
21 was filed on November 23, 2011, and briefing is complete.

22 This week, the parties met and conferred regarding the possibility of settling this  
23 matter. They agreed that now would be an opportune time to pursue settlement in a more  
24 formal setting, with the assistance of a private mediator. Accordingly, they ask that the Court  
25 suspend briefing and hearing of plaintiffs’ motion for class certification and that it reserve  
26 ruling on Trex’s motion to transfer until the parties mediate, which they have agreed to do as  
27 soon as reasonably possible.  
28

1 More specifically, and with the aims of moving forward as expeditiously as reasonably  
2 possible and keeping the Court apprised of their activities and progress, the parties agree-to  
3 and propose the following schedule:

4 Selection of private mediator by mutual agreement: January 27, 2012;

5 Mediation: by March 30, 2012, or as soon thereafter as the parties' mutually selected  
6 mediator is available for mediation;

7 Report to the Court of results of mediation: within five (5) court days following the  
8 end of mediation;

9 If the parties have reached a settlement as to class claims, they will propose a schedule  
10 to the Court for preliminary approval of their proposed settlement with their report of the  
11 results of mediation (*i.e.*, within five (5) court days following the end of mediation);

12 If, on the other hand, the parties are unable to settle the case via mediation in spite of  
13 their best, good-faith efforts, then the parties will ask that the Court re-note for hearing Trex's  
14 motion for transfer and that the schedule for briefing and hearing of plaintiffs' motion for  
15 class certification be established as follows:

16 Motion for class certification: due within 14 days of the date on which the Court rules  
17 on the motion for transfer. Depending on the Court's ruling on the motion to transfer,  
18 the motion and brief will be filed either in the Northern District of California or the  
19 Western District of Virginia (if the Court transfers the case to the Western District of  
20 Virginia, then plaintiffs' motion and brief will be due within 14 days of the date on  
which the Court rules on the motion to transfer, or as soon thereafter as the transferee  
court permits their filing);

21 Opposition to class certification: due within 30 days of plaintiffs' filing their motion  
22 for class certification, with a reservation of the right to seek an extension of this  
23 deadline if needed to conduct discovery for issues raised in the motion for class  
certification;

24 Reply in support of class certification: due within 14 days of the filing of Trex's  
25 opposition papers, with potential extension if Opposition date is extended;

26 Hearing on motion for class certification: at the Court's earliest convenience, in  
27 accordance with the Court's scheduling rules.

28 In order to establish good cause for the approval of their request, the parties state the  
following:

1           1.       This case is a proposed nationwide class-action lawsuit involving plaintiffs’  
2 allegations relating to mold and spotting on Trex decking material. Plaintiffs and proposed class  
3 representatives reside in the states of California, Connecticut, Florida, Illinois, Maryland, Michigan,  
4 New Jersey, New York, North Carolina, Ohio, and Washington. No specific trial date has yet been  
5 ordered by the Court.

6           2.       Plaintiffs propounded their first discovery requests, including their first interrogatories  
7 and requests for production, to defendant Trex on March 18, 2011. Trex’s most recent document  
8 production was on September 29, 2011.

9           3.       On November 3, 2011, following further review of Trex’s documents, including those  
10 produced at the end of September 2011, plaintiffs propounded a 30(b)(6) notice to Trex. Among the  
11 topics were technical matters regarding Trex’s manufacturing processes and product ingredients and  
12 additives. As the parties previously apprised the Court, they expected the deposition to produce  
13 information relevant to plaintiffs’ motion for class certification.

14           4.       Trex advised the plaintiffs that it intended to produce two current-employee witnesses  
15 in response to plaintiffs’ notice. Trex further advised that due to scheduling conflicts and the  
16 holidays, these witnesses would not be available for their depositions until December 28-29, 2011.  
17 Because this was only a little over a week before January 6, 2012, when plaintiffs’ motion for class  
18 certification was then due, and only a few days before the New Year’s Day holiday, such that  
19 plaintiffs would not have had time to obtain the transcripts of the depositions and then to review and  
20 analyze the material in order to incorporate it into their class-certification brief as needed, the parties  
21 sought and obtained an extension of the briefing schedule on class certification. Thus, plaintiffs’  
22 motion is currently due on January 20, 2012.

23           5.       Since obtaining this extension, plaintiffs deposed Trex’s two 30(b)(6) witnesses on  
24 December 29, 2011. In addition, Trex served answers to plaintiffs’ second interrogatories on  
25 December 27, 2011. Further, two third parties produced materials in response to plaintiffs’  
26 subpoenas in late December 2011 and early January 2012.

27           6.       Additionally, Trex filed a motion to transfer this matter to the Western District of  
28 Virginia on November 23, 2011. Plaintiffs filed their response in opposition to Trex’s motion on

1 December 7, 2011. Trex filed its reply on December 14, 2011. As noted above, Trex's motion is  
2 currently noted for hearing on March 16, 2012.

3 7. The parties now wish to enter mediation in order to attempt to settle this matter.

4 For the foregoing reasons, the parties submit that there is good cause to revise the schedule as  
5 requested, so that they can attempt in good faith to settle this matter via mediation. They ask  
6 respectfully that the Court accept the revised schedule they submit.

7  
8 DATED: January 17, 2012.

HAGENS BERMAN SOBOL SHAPIRO LLP

9  
10 By /s/ Robert F. Lopez  
11 Steve W. Berman  
12 Tyler S. Weaver  
13 Robert F. Lopez

14 *Attorneys for Select Plaintiffs and Lead Counsel  
for the Proposed Class*

15 DATED: January 17, 2012.

K&L GATES LLP

16  
17 By: /s/ Patrick J. Perrone  
18 Patrick J. Perrone  
19 Todd L. Nunn

20 *Attorneys for Defendant Trex Company, Inc.*

**[PROPOSED] ORDER**

The foregoing Stipulation having been reviewed, and good cause appearing therefor, the requested scheduling change is hereby ORDERED and approved. In order that the parties may attempt in good faith to settle this matter via mediation, the case schedule is revised as follows:

Hearing and decision on defendant's motion to transfer is deferred as stated below;

Briefing, hearing, and decision on plaintiffs' motion for class certification is deferred as stated below;

Deadline to select private mediator by mutual agreement: January 27, 2012;

Mediation: by March 30, 2012, or as soon thereafter as the parties' mutually selected mediator is available for mediation;

Report to the Court of results of mediation: within five (5) court days following the end of mediation;

If the parties have reached a settlement as to class claims, they will propose a schedule to the Court for preliminary approval of their proposed settlement with their report of the results of mediation (*i.e.*, within five (5) court days following the end of mediation);

If, on the other hand, the parties are unable to settle the case via mediation in spite of their best, good-faith efforts, then the parties will ask that the Court re-note for hearing Trex's motion for transfer. In addition, in the event the parties are unable to settle the case via mediation in spite of their best, good-faith efforts, the schedule for briefing and hearing of plaintiffs' motion for class certification is established as follows:

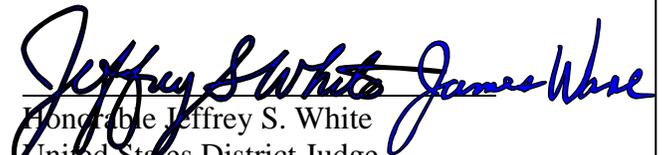
Motion for class certification: due within 14 days of the date on which the Court rules on the motion for transfer. Depending on the Court's ruling on the motion to transfer, the motion and brief will be filed either in the Northern District of California or the Western District of Virginia (if the Court transfers the case to the Western District of Virginia, then plaintiffs' motion and brief will be due within 14 days of the date on which the Court rules on the motion to transfer, or as soon thereafter as the transferee court permits their filing);

Opposition to class certification: due within 30 days of plaintiffs' filing their motion for class certification, with a reservation of the right to seek an extension of this deadline if needed to conduct discovery for issues raised in the motion for class certification;

1 Reply in support of class certification: due within 14 days of the filing of Trex's  
2 opposition papers, with potential extension if Opposition date is extended;

3 Hearing on motion for class certification: at the Court's earliest convenience, in  
4 accordance with the Court's scheduling rules.

5  
6 Dated: January 18, 2012  
7 \_\_\_\_\_

  
8 Honorable Jeffrey S. White  
9 United States District Judge  
10 by Honorable James Ware