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23 Attorneys for Defendants Tempur-Sealy International, Inc.,
 24 formerly known as Tempur-Pedic International, Inc. and
 25 Tempur-Pedic North America, LLC

26 **UNITED STATES DISTRICT COURT**
 27 **NORTHERN DISTRICT OF CALIFORNIA**

28 MICHAEL DODSON, ALVIN TODD, and
 29 HENRY and MARY THOMPSON, et al.,
 30 individually and on behalf of all others
 31 similarly situated,

32 Plaintiffs,

33 vs.

34 TEMPUR-SEALY INTERNATIONAL,
 35 INC., formerly known as TEMPUR-PEDIC
 36 INTERNATIONAL, INC. and TEMPUR-

Case No. 3:13-cv-04984-JST

**Amended Joint Stipulation and Order
 to Modify the October 20, 2014
 Scheduling Order**

Complaint Filed: October 25, 2013
 Trial Date: None Set

1 PEDIC NORTH AMERICA, LLC,
2 Defendants.

3 Pursuant to Local Rules 6 and 7, Plaintiffs and Defendants Tempur-Sealy
4 International, Inc. and Tempur-pedic North America, LLC (collectively, “Defendants”,
5 and, together with Plaintiffs, the “Parties”), hereby stipulate and agree to the following
6 modification of the October 20, 2014 Scheduling Order:
7

8 **I. BACKGROUND**

9 1. Plaintiffs filed the original Complaint on October 25, 2013. Plaintiffs filed
10 the First Amended Complaint on November 7, 2013 and the Second Amended
11 Complaint on August 29, 2014. (Doc. 63).
12

13 2. Defendants represent that during November 2013 until January 2014,
14 Defendant engaged in an effort to determine the scope of likely document production in
15 order to estimate how long document discovery and Electronically Stored Information
16 (“ESI”) searches would take for purposes of the upcoming scheduling conference.
17 Declaration of Daniel Gerber ¶ 4 (hereinafter Gerber Dec.), attached as Exhibit A.
18

19 3. On June 4, 2014, this Court entered a Scheduling Order setting the
20 deadline to file the motion for class certification on January 15, 2015. (Doc. 56).

21 4. On August 5, 2014, Plaintiffs propounded two sets of almost identical
22 discovery on Defendants consisting of 204 requests for production of documents (102 to
23 each Defendant) and 66 interrogatories (33 to each Defendant). Following extensions,
24 Defendants’ served responses to the discovery on September 24, 2014. Gerber Dec ¶ 5.
25

26 5. Since September 24, 2014, Defendants’ counsel has conferred with
27 Plaintiffs’ counsel in a good faith effort to reduce the scope of discovery requested;
28

1 while all disputes have not been resolved, the scope of discovery is largely settled upon.
2 *See* Gerber Dec. ¶ 6.

3 6. On August 27th and 29th, 2014, Plaintiffs propounded two more sets of
4 discovery consisting of 42 interrogatories (21 to each Defendant) and 96 requests for
5 production (48 to each Defendant). On September 29th and October 1st, 2014
6 Defendants served responses to that discovery. *See* Gerber Dec. ¶ 7.

7
8 7. On October 17, 2014, the Parties filed a Joint Motion to Modify the
9 Scheduling Order. This Court entered an Order on October 20, 2014 setting the
10 deadline to file the motion for class certification on February 16, 2014. (Doc. 78).

11
12 8. On November 7, 2014, Plaintiffs propounded three more sets of discovery
13 containing 118 interrogatories (59 to each Defendant) and 10 requests for production (5
14 to each Defendant). Defendants have received an extension and have not yet responded
15 to this discovery. *See* Gerber Dec. ¶ 8.

16 9. Defendants represent that despite Defendants' best efforts, unforeseen
17 technical difficulties and miscommunication have made the deadlines in the October 20,
18 2014 Scheduling Order impossible to meet. *See* Gerber Dec. ¶ 9. Defendants have not
19 completed an autopsy of the specific failures that led to these delays. Defendants have
20 been focused on complying with discovery.

21
22 10. This delay prevents the Parties from maintaining the current schedule set
23 forth in the October 20, 2014 Scheduling Order, which defense counsel thought could
24 be met. *See* Gerber Dec. ¶ 10. Defendants represent that Defendants and Defendants'
25 counsel take seriously their obligations to the Court and to the Plaintiffs to comply with
26 the agreed scope of discovery. However, unforeseen technical difficulties and
27 miscommunication have mired this production. *Id.*

1 11. Because of the delay in Defendants’ production, the Parties have already
2 agreed to postpone the depositions of Defendants’ representatives until early 2015. *See*
3 Gerber Dec. ¶ 11.

4 12. The modification of the October 20, 2014 Scheduling Order will benefit all
5 Parties because it will allow for a full adjudication after a reasonable and complete
6 discovery. The modification to the Scheduling Order will enable the Parties to fully and
7 thoroughly develop and complete the underlying discovery necessary to prepare and
8 respond to Plaintiffs’ motion for class certification.

9 13. This is the second request for modification of the Scheduling Order.
10 Gerber Dec. ¶ 13.

11 **II. STIPULATION**

12 14. The Parties stipulate and agree to, and request the Court order the
13 following modified deadlines:
14

15

Event	Current Deadline	Proposed Deadline
Deadline for Defendants to complete production of all documents in response to non-objected to requests for production		To be produced on a timely rolling basis through January 31, 2015
Deadline for Plaintiffs to identify expert witnesses and provide proposed deposition dates	January 16, 2015	May 16, 2015
Deadline to file motion for class certification	February 16, 2015	June 16, 2015
Deadline for Defendants to identify expert witnesses and provide proposed deposition dates	March 10, 2015	July 10, 2015 (or 24 days from filing the motion for class

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		certification, whichever is sooner)
Depositions of Plaintiffs' expert witnesses re: class certification	February 18, 2015- March 20, 2015	June 18, 2015- July 20, 2015 (or 2-34 days from filing the motion for class certification, whichever is sooner)
Deadline to file opposition to motion for class certification	April 6, 2015	August 6, 2015 (or 52 days from the filing of the motion for class certification, whichever is sooner)
Depositions of Defendants' expert witnesses re: class certification	April 15, 2015-May 9, 2015	August 15, 2015 – September 9, 2015 (or 60-85 days from filing the motion for class certification, whichever is sooner)
Deadline to file reply in support of motion for class certification	June 13, 2015	October 13, 2015 (or 119 days from filing the motion for class certification, whichever is sooner)
Class certification hearing	July 2, 2015	November 2, 2015

Dated: December 15, 2014.

By: /s/ Samantha C. Duke
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By: /s/ Angelique Adams

*Attorneys for Plaintiffs and the Proposed
Class*

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2 discovery consisting of 42 interrogatories (21 to each Defendant) and 96 requests for
3 production (48 to each Defendant). On September 29th and October 1st, 2014
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9 to this discovery.

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11 miscommunication have made the deadlines in the October 20, 2014 Scheduling Order
12 impossible to meet. Defendants have not completed an autopsy of the specific failures
13 that led to these delays. Defendants have been focused on complying with discovery.
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18 Court and to the Plaintiffs to comply with the agreed scope of discovery. However,
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22 agreed to postpone the depositions of Defendants' representatives until early 2015.

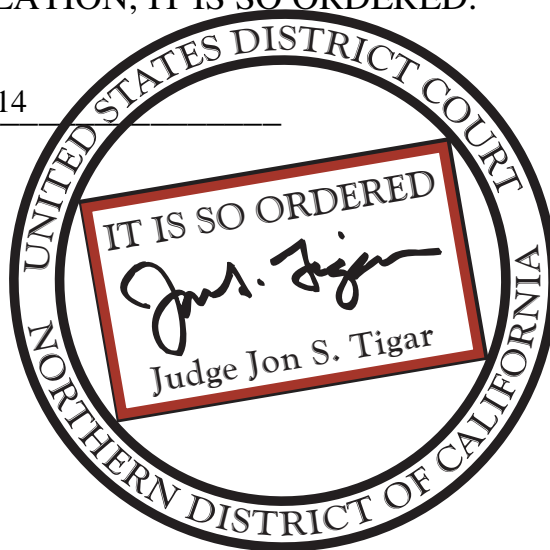
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24 Parties because it will allow for a full adjudication after a reasonable and complete
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ORDER

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

Dated: December 18, 2014



1 **SIGNATURE CERTIFICATION**

2 I hereby certify that the content of this document is acceptable to Angelique
3 Adams, counsel for Plaintiffs and the Proposed Class, and I have obtained Ms. Adams’
4 authorization to affix his electronic signature to this document.
5

6 By: /s/ Samantha C. Duke
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