

1 HAGENS BERMAN SOBOL SHAPIRO LLP
 1918 Eighth Avenue, Suite 3300
 2 Seattle, WA 98101
 Telephone: 206.623.7292
 3 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@hbsslw.com
 5 Tyler S. Weaver (*pro hac vice*)
tyler@hbsslw.com
 6 Robert F. Lopez (*pro hac vice*)
robl@hbsslw.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
 12 SAN JOSE DIVISION

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
 17 themselves and all others similarly situated,

Case No. CV 09-00670-JF

STIPULATED PROTECTIVE ORDER

18 Plaintiffs,

19 vs.

20 TREX COMPANY, INC., a Delaware
 corporation,

21 Defendant.

1 This Stipulated Protective Order is entered into by and between 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. (the “Parties”), by and through their respective
5 counsel of record, because discovery in this case may result in the production and exchange of
6 information and documents that one or more Parties contend are confidential, proprietary, trade secret
7 or other private information.

8 The parties acknowledge that the purpose of this Stipulated Protective Order is not to confer
9 blanket protections on all disclosures or responses to discovery, but rather to protect information that
10 is entitled under the applicable legal principles to treatment as confidential.

11 THEREFORE, the Parties, by and through their respective counsel, HEREBY STIPULATE,
12 AGREE AND JOINTLY REQUEST, that a protective order be entered to govern pretrial
13 proceedings in this action according to the following terms and provisions:

14 **1. Application of this Protective Order.** This Stipulated Protective Order shall apply
15 equally to all documents, materials, depositions or other testimony, deposition exhibits, interrogatory
16 responses, responses to requests for admissions, and other information (all such materials and
17 information shall be referred to as “Information”) produced by any party (or third-party) in
18 connection with this case, and designated by any party as “Confidential” as set forth below.

19 **2. Designation.** Any party may designate as “Confidential” any Information which that
20 party considers in good faith to contain information that should be so designated. To designate a
21 document or other material as “Confidential,” a party or counsel for a party shall stamp the document
22 or other material with the phrase, “CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER.” In
23 lieu of marking the originals if only copies are to be distributed, the copies that are produced or
24 exchanged shall be marked. Where a document consists of more than one page, the first page and
25 each page on which Confidential Information appears shall be so designated. Each party that
26 designates Information for protection under this Order must take care to limit any such designation to
27 the specific material that qualifies under the appropriate standards. A Designating Party must take
28 care to designate for protection only those parts of documents, discovery responses, testimony, or

1 other information that qualify – so that other portions of said documents, discovery responses,
2 testimony, or other information for which protection is not warranted are not swept unjustifiably
3 within the ambit of this Order. If it comes to a party’s attention that Information that is designated
4 for protection does not qualify for protection at all, and the party agrees that said Information does
5 not qualify for protection at all, that party must promptly notify all other parties that it is withdrawing
6 the mistaken designation.

7 **3. Use of “Confidential” Documents and Information.** Except with the prior written
8 consent of the party originally designating a document as Confidential, or as hereinafter provided
9 under this Protective Order, no documents or information designated as “Confidential Pursuant To
10 Protective Order” (hereinafter and after referred to as “Confidential Information”) shall be shown to
11 anyone other than:

- 12 a) The Parties in the litigation entitled *Dean Mahan v. Trex Co. Inc.*, United States
13 District Court, Northern District of California, Case No. CV 09-00670-JF (the “*Mahan*
14 Action” or “this litigation”);
- 15 b) Counsel of record for the Parties in the *Mahan* Action;
- 16 c) Any representative, employee, or agent of the Parties in this litigation, where that
17 representative, employee, or agent is working on this litigation with outside counsel;
- 18 d) Any representative of any insurer against whom any party seeks coverage for claims
19 arising from this litigation, where that representative is working on this litigation;
- 20 e) Administrative and clerical employees of any of the persons identified in
21 subparagraphs (a), (b), (c), and (d), in connection with their work on this litigation;
- 22 f) Any authors of the Confidential Information or persons who received, or had access
23 to, the Confidential Information in the ordinary course of business prior to the filing of this litigation;
- 24 g) Professional photocopy or document services, as directed by persons identified in
25 subparagraphs (a), (b), (c), (d), and (e), in connection with their work on this litigation;
- 26 h) Outside consultants or expert witnesses retained in this litigation who are not
27 employees of a party or of an affiliate of a party, provided that any such consultant or expert witness
28 has first executed a copy of Exhibit A before being shown or given any Confidential Information;

1 i) The Court and court personnel, consistent with the provisions for filing Court
2 materials under seal as set forth in paragraph 7 of this Order;

3 j) Percipient witnesses and their attorneys at, or in preparation for, deposition or other
4 testimony in this litigation, where examining counsel has a good faith basis for believing that the
5 witness or deponent has information or testimony pertinent to the Confidential Information, provided
6 that any such witness and their attorney has first executed a copy of Exhibit A before being shown or
7 given any Confidential Information; and

8 k) Court reporters and any persons involved in recording deposition testimony in this
9 litigation.

10 **4. No Disclosure of Confidential Information or Derivative Materials to Others.**

11 Persons who, by virtue of this litigation, and consistent with the procedures provided under this
12 Protective Order, acquire knowledge of Confidential Information, shall not disclose or permit the
13 disclosure of it or of any information obtained, derived, compiled, or ascertained therefrom, to any
14 person who is not entitled to receive such information under this Protective Order. Confidential
15 Information may be used in connection with this litigation, and shall not be used for any business,
16 proprietary or commercial purpose, or for any other purpose; *provided, however*, that the party from
17 whom Confidential Information originates may use its own Confidential Information for any purpose.

18 **5. Challenges to “Confidential” Designation.**

19 a) **Procedure for Challenge.** If a party contends that any material designated as
20 “Confidential” is not entitled to Confidential treatment, such party may at any time give written
21 notice to the party who designated the material, specifically identifying the challenged material. The
22 designating party, by its counsel, shall respond in writing within 10 (ten) court days of receipt of the
23 written request, or within such other period of time as may be designated by order of the Court or
24 agreement of the parties. If the designating party in its written response refuses to remove the
25 Confidential designation, its response shall state the reasons for this refusal. If after service of such
26 written response the parties continue to disagree as to whether the material is entitled to Confidential
27 treatment, then they shall meet and confer with respect to the challenged designation. If following
28 their conference the parties continue to disagree, then the designating party shall file a motion with

1 the Court for a ruling that the material stamped Confidential is entitled to such status and protection.
2 If such motion is made, the parties shall fully comply with the terms of this Order with respect to the
3 Confidential Information at issue, unless and until the party who claims that the material is
4 Confidential withdraws such designation in writing, or the Court orders that the material is not
5 entitled to such protection. Failure of the designating party to provide a timely (as defined in this
6 subparagraph) written response to a written notice challenging the designation of any material as
7 Confidential shall be deemed a withdrawal of the Confidential designation as to that material.

8 **b) Lack of Designation Not To Be Substantive Evidence.** The fact that a party does
9 not object to the designation of material as Confidential Information or does not move to require that
10 the designation be withdrawn shall not be an indication that the party agrees that the information is in
11 fact confidential, proprietary, or otherwise private information, and no party shall use the fact either
12 (i) that a party does not object to the designation of material as Confidential Information, or (ii) that
13 the party does not move to require that the designation be withdrawn as substantive evidence that the
14 party agreed that the information is in fact confidential, proprietary, or otherwise private information.
15 Similarly, neither party shall use the fact that a party does not designate material as Confidential
16 Information under this Protective Order as substantive evidence that the material is not in fact
17 confidential, proprietary, or otherwise private information.

18 **6. Confidential Information in Depositions.**

19 a) A party may designate information disclosed during a deposition or in response to
20 discovery requests as Confidential Information by so indicating in said response or on the record at
21 the deposition and requesting the preparation of a separate transcript of such material. In addition, a
22 party may designate in writing, within twenty (20) days after receipt of said response or of the
23 deposition transcript for which the designation is proposed, that specific pages of the transcript and/or
24 specific responses be treated as Confidential Information. In such circumstances, counsel for all
25 parties shall be responsible for marking all previously unmarked copies of the designated material in
26 their possession or control as “CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER.”

27 b) Confidential Information may be disclosed during any deposition in this action to any
28 third-party witness or third-party witness’s attorney entitled to access to such information under this

1 Order, if such third-party witness or attorney first executes a copy of Exhibit A. If such third-party
2 witness or third-party witness's attorney refuses to execute a copy of Exhibit A, and any party objects
3 to the disclosure of Confidential Information to that witness or attorney, Confidential Information
4 shall not be disclosed to that witness or attorney until the dispute has been resolved. If, in the course
5 of the deposition, Confidential Information is disclosed and a third-party witness is asked if he or she
6 agrees to be bound by the terms of the Protective Order, and he or she does not so agree, then neither
7 that witness nor his or her counsel, if any, may be given any copy of or retain the Confidential
8 Information, including, but not limited to, a copy of any pages of the transcript of the deposition that
9 are designated Confidential Information, though during the deposition that witness and his or her
10 counsel, if any, must be shown and allowed to review a copy of any document marked Confidential if
11 he or she is to be examined on or with respect to it. In the event of such refusal by the third-party
12 witness, the reporter shall be instructed to give that witness written notice when the transcript has
13 been prepared, stating that the witness may inspect the transcript and its exhibits in the reporter's
14 office, and if the original deposition transcript is not signed within thirty (30) days after the date of
15 the notice, it will be used as if it had been signed. The witness will be permitted to review the
16 deposition transcript and exhibits at the reporter's office but shall not be permitted to retain a copy of
17 portions of the deposition transcript or exhibits that have been designated as Confidential
18 Information.

19 c) If a person other than the witness and his or her attorney is present at a deposition at
20 which Confidential Information is to be elicited or disclosed, and such person is not entitled to access
21 to such information under the terms of the Order, that person shall not be permitted to be present
22 while Confidential Information is elicited or disclosed during the deposition without the consent of
23 all parties.

24 **7. Filing of Documents Under Seal.**

25 All pleadings, motions, briefs, memoranda, or other filings or lodgings with the Court which
26 incorporate, disclose, or contain Confidential Information shall be made in accordance with Civil
27 Local Rule 79-5 and General Order No. 62 of this Court.
28

1 **8. Subpoena by Other Courts or Agencies.** If at any time any Confidential Information
2 governed by this Order is subpoenaed by a court, administrative or legislative body, or by any person
3 or entity purporting to have authority to require the production of such information, the party to
4 whom the subpoena is directed shall immediately give written notice thereof to any person who has
5 designated such information as Confidential Information. After receipt of the notice specified under
6 this paragraph, the party seeking to maintain confidentiality shall have the sole responsibility for
7 obtaining any order it believes necessary to prevent disclosure of Confidential Information. Unless a
8 court orders otherwise, the party to whom the subpoena is directed shall not produce any Confidential
9 Information until the party seeking to maintain confidentiality has had an opportunity to seek an
10 appropriate order. If the party seeking to maintain confidentiality does not move for a protective
11 order within the time allowed for production by the subpoena (or within such time as a court may
12 direct or as may be agreed upon between the designating person and the subpoenaing party), or give
13 written notice of such motion to the subpoenaing party and the person to whom the subpoena is
14 directed within the time allowed for production by the subpoena, the party to whom the subpoena or
15 other request is directed may commence production in response thereto. The party to whom the
16 subpoena is directed shall not produce any Confidential Information while a motion for a protective
17 order brought pursuant to this paragraph is pending, or while any appeal from or request for appellate
18 review or such motion is pending, unless ordered by a court to do so.

19 **9. Inadvertent Disclosure.**

20 a) If a party inadvertently produces Confidential Information without marking it as such,
21 it may be disclosed to others until the receiving party becomes aware of the error. In such
22 circumstances, upon learning of the mistake, the party asserting confidentiality shall promptly notify
23 the other parties of the fact that such document or material should have been designated as
24 Confidential, and the parties will meet and confer in order to ensure that the document or material is
25 properly marked. Upon receipt of oral or written notice of the inadvertent production, the
26 information must be treated as if it had been timely designated under this Protective Order, and the
27 receiving party must endeavor in good faith to obtain all copies of the document which it distributed
28 or disclosed to persons not authorized to access such information under paragraph 3 above, as well as

1 copies made by such persons. Any oral notice shall be confirmed in writing within 48 hours of such
2 oral notice.

3 b) If Confidential Information, properly marked as such, is disclosed, through
4 inadvertence or otherwise, in contravention of the terms of this Order, counsel for the party who
5 made the disclosure shall use reasonable best efforts to bind the person or persons to whom
6 Confidential Information is disclosed to this Protective Order by requesting that such person execute
7 a copy of Exhibit A. Counsel shall also immediately inform opposing counsel of the disclosure and
8 surrounding circumstances. In the event anyone shall violate or threaten to violate any terms of this
9 Protective Order, the parties agree that the aggrieved party may immediately apply to obtain
10 injunctive relief against any such person, and in the event the aggrieved party shall apply to do so, the
11 responding person, subject to the provisions of this Protective Order, shall not employ as a defense
12 thereto the claim that the aggrieved party possesses an adequate remedy at law. The parties and any
13 other persons subject to the terms of this Protective Order agree that the Court shall retain jurisdiction
14 over them for the purpose of enforcing this Protective Order.

15 c) If a party inadvertently produces a document that it later discovers or in good faith
16 asserts to be a privileged document, the production of that document shall not be deemed to constitute
17 the waiver of any applicable privileges. In such circumstances, the producing party shall
18 immediately notify the receiving party of the inadvertent production, and request the return or
19 confirmed destruction of the privileged materials. Within five (5) business days of receiving such
20 notification, the receiving party shall return or confirm destruction of all such materials, including
21 any summaries thereof. No use shall be made of such inadvertently produced documents during
22 depositions or at trial, nor shall they be disclosed to anyone who was not given access to them prior
23 to the request to return or destroy them. The party receiving such inadvertently produced documents
24 may, after receipt of the producing party's notice of inadvertent production, move the Court to
25 dispute the claim of privilege or immunity, but the motion shall not assert as a ground therefor the
26 fact or circumstances of the inadvertent production.

27 **10. Modification Permitted.** Nothing in this Protective Order shall prevent any person
28 from seeking modification of this Protective Order or from objecting to discovery that it believes to

1 be otherwise improper. The parties agree to meet and confer in good faith before raising such
2 requests for modification to the Court.

3 **11. Responsibility of Attorneys.** The attorneys of record are responsible for employing
4 reasonable measures, consistent with this Protective Order, to control duplication of, access to, and
5 distribution of copies of Confidential Information.

6 **12. Reservation of Rights.** Nothing contained in this Protective Order and no actions
7 taken pursuant to this Protective Order shall prejudice the right of any party to contest the alleged
8 relevancy, admissibility, or discoverability of the Confidential Information sought by any party, and
9 producing or receiving Confidential Information, or otherwise complying with the terms of this
10 Stipulated Protective Order, shall not:

11 a) Prejudice the rights of any party to object to the production of documents it
12 considers not subject to discovery;

13 b) Prejudice, limit or affect in any way the privacy rights of any party, or any
14 party's employee, representative, or agent;

15 c) Prejudice the rights of any party to object to authenticity or admissibility of
16 any document, testimony or evidence subject to this Stipulated Protective Order;

17 d) Prejudice the rights of any party to apply to this Court for a further protective
18 order relating to any Confidential Information; or

19 e) Prevent the parties from agreeing in writing to alter or waive the provisions or
20 protections provided for herein with respect to any particular Confidential Information and to seek
21 Court approval for such modification, if necessary.

22 **13. Alternative Source.** Nothing in this Stipulated Protective Order shall be deemed to
23 render Confidential any Information that a non-designating party obtains lawfully from an alternative
24 source (*i.e.*, from a source for which no Confidential designation is made pursuant to this Stipulated
25 Protective Order).

26 **14. Return of Confidential Information.** Within forty-five (45) days after termination of
27 this litigation, including any appeals therefrom, all parties and other persons to whom Confidential
28

1 Information has been disclosed shall return all Confidential Information to the producing party,
2 including all copies, or confirm in writing to the producing party that it has been destroyed.

3 **15. Stipulated Protective Order To Be Binding.** This Stipulated Protective Order shall,
4 subject to Court approval, be binding upon the parties upon the signature of their counsel hereto, and
5 each party agrees to comply with its terms and to be bound thereby.

6 **16. Meet and Confer.** If any dispute arises in connection with this Protective Order, the
7 parties shall first meet and confer in good faith to resolve the dispute. If the parties are unable to
8 resolve the dispute informally, any party may bring the dispute before the Court for resolution.

9 **17. Retention of Jurisdiction To Enforce Protective Order.** The obligations created by
10 this Protective Order shall survive the termination of these proceedings unless otherwise modified by
11 the Court. The Court shall retain jurisdiction, even after termination of the proceeding, to enforce
12 this Protective Order and to make such amendments and modifications to this Order as may be
13 appropriate.

14 DATED: February 25, 2011

HAGENS BERMAN SOBOL SHAPIRO LLP

15
16 By /s/ Robert F. Lopez

17 Steve W. Berman
18 Tyler S. Weaver
19 Robert F. Lopez

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

21 DATED: February 25, 2011

K&L GATES LLP

22
23 By: /s/ Patrick J. Perrone

24 Patrick J. Perrone
25 Todd L. Nunn

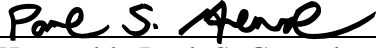
26 *Attorneys for Defendant Trex Company, Inc.*

1 **IT IS SO ORDERED:**

2 The forgoing Stipulation for Protective Order, having been reviewed and approved,

3 IT IS HEREBY ORDERED that the Parties and all persons who may execute an Exhibit A
4 thereto shall comply with the terms set forth therein.

5
6 Dated March 10, 2011


7 Honorable Paul. S. Grewal
8 United States Magistrate Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the Court in the case of *Dean Mahan, et al. v. Trex Company, Inc.*, United States
7 District Court, Northern District of California, San Jose Division, Case No. CV 09-00670-JF. I agree
8 to comply with and be bound by all the terms of this Stipulated Protective Order, and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I promise that I will not disclose in any manner any information or item that is
11 subject to this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the USDC, Northern District of California, San
14 Jose Division for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
15 enforcement proceedings occur after termination of this action.

16
17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____

21
22
23 K:\1303793\00005\21451_TLN\21451P2190