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HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, Washington 98101
Telephone: 206.623-7292
Facsimile: 206.623-0594

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

Attorneys for Select Plaintiffs and Lead Counsel
for the Proposed Class

K&L GATES LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
Telephone: 206.623.7580
Facsimile: 206.623.7022

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

Attorneys for Defendant Trex Company, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiffs,

vs.

TREX COMPANY, INC., a Delaware
corporation,

Defendant.

Case No. CV 09-00670-JF

**STIPULATION AND ~~{PROPOSED}~~
SCHEDULING ORDER**

1 The parties present the following scheduling order for entry by the Court. They also ask
2 respectfully that the Court take note of the following issues raised by the Court's order of December
3 13, 2010, which it issued following the telephonic case management conference held on December
4 10, 2010:

5 *First:* The parties ask that the Court take note of the dates regarding plaintiffs' planned
6 motion for class certification. The parties' understanding is that the Court, at the telephonic hearing
7 on December 10, 2010, adopted their agreed-upon deadline for the filing of the motion for class
8 certification. That agreed-upon deadline is October 28, 2011, as specified in the parties' joint Rule
9 26(f) report. In addition, the parties agreed on deadlines for filing opposition and reply briefing and
10 proposed them for November 30, 2011, and December 15, 2011, respectively. Those dates also are
11 specified in the parties' joint Rule 26(f) report. The parties note, however, that the Court's December
12 13, 2010 order specifies the date for hearing plaintiffs' motion for class certification as April 29,
13 2011. (April 29, 2011, appears in the joint Rule 26(f) report as the date that defendant proposed for
14 the deadline to amend pleadings, so it appears that there may have been an inadvertent error in the
15 written order of December 13, 2011.) In the event the Court agrees with the parties' understanding of
16 its ruling as to class-certification-related deadlines, they have inserted their agreed dates into the
17 proposed schedule below.

18 *Second:* The parties ask that the Court take note of the deadline to amend pleadings. The
19 Court's order of December 13, 2010, provides that the Court has adopted the defendant's proposed
20 case schedule as recited. Defendant's proposed case schedule designated the deadline to amend
21 pleadings as April 29, 2011. But at the December 10, 2010 telephonic conference, the plaintiffs
22 asked if the Court would instead order a deadline midway between defendant's proposed April 29,
23 2011 date and plaintiffs' proposed date of August 31, 2011. The Court agreed; accordingly, the
24 parties have placed the deadline to amend pleadings at June 30, 2011, in the proposed schedule
25 below.

26 *Third:* As for dates following class certification, the Court's order of December 13, 2011,
27 provides that "[t]he Court adopts defendant's proposed schedule as recited." It is defendant's
28 understanding, however, that at the case management conference on December 10, 2010, the Court

1 deferred setting later dates on the calendar until plaintiff's motion on class certification is decided.
 2 While plaintiffs do not share this understanding, they are concerned that if the Court orders a
 3 December 15, 2011 deadline for the filing of any reply to their motion for class certification, then,
 4 under defendant's schedule as initially proposed, the deadline to complete briefing on dispositive
 5 motions would not be until sometime in mid-2013 (16 months following issuance of an order on
 6 plaintiffs' motion for class certification, per defendant's proposal), with any trial to follow sometime
 7 thereafter. The plaintiffs do not believe that this was what the Court intended, especially in light of
 8 the reference in its December 13, 2010 order to an April 29, 2011 hearing date for plaintiffs' motion
 9 for class certification.

10 Accordingly, the parties propose the following schedule for entry by the Court. As for setting
 11 other dates on the schedule, the parties ask for the Court's guidance and stand prepared to submit a
 12 fuller order upon the Court's direction:

| | |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14 Initial Disclosures: | February 18, 2011 (already exchanged) |
| 15 Deadline to amend pleadings: | June 30, 2011 |
| 16 Motion for class certification: | October 28, 2011 |
| 17 Opposition to class certification: | November 30, 2011, with a reservation of the right to seek an extension of this 18 deadline if needed to conduct discovery for 19 issues raised in the Motion for Class Certification |
| 20 Reply in support of class certification: | December 15, 2011, with potential 21 extension if Opposition date is extended |
| 22 Hearing on motion for class certification | January 13, 2012 |

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Dated: March 4, 2011.

K&L GATES LLP

By: /s/ Patrick J. Perrone (per email authorization)

Todd L. Nunn
Patrick J. Perrone
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Telephone: 206.623-7580
Facsimile: 206.623-7022

Attorneys for Defendant Trex Company

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Robert F. Lopez

Steve W. Berman (*pro hac vice*)
Tyler S. Weaver (*pro hac vice*)
Robert F. Lopez, (*pro hac vice*)
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

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

General Order 45, Part X-B, the filer attests that concurrence in the filing of this document
has been obtained from the above-referenced counsel.

So Ordered.



Honorable Jeremy Fogel
United States District Judge

3/14/11

Dated

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 4, 2011, I electronically filed the foregoing with the Clerk of
3 the Court using the CM/ECF system which will send notification of such filing to all attorneys of
4 record via the CM/ECF system.

5 /s/ Robert F. Lopez
6 Robert F. Lopez
7 HAGENS BERMAN SOBOL SHAPIRO LLP
8 1918 Eighth Avenue, Suite 3300
9 Seattle, WA 98101
10 Telephone: (206) 623-7292
11 Facsimile: (206) 623-0594
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