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Attorneys for Defendant  
 TREND MICRO, INC. (USA) sued herein as  
 TREND MICRO CORPORATION



16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN JOSE DIVISION

19 BRIAN GRAIFMAN, on Behalf of Himself, All  
 20 Others Similarly Situated, and the General  
 Public,

21 Plaintiff,

22 v.

23 TREND MICRO CORPORATION, and DOES  
 24 1 through 10, Inclusive,

25 Defendants.

**Case No. CV11-02488 RMW**

**STIPULATION AND ORDER  
 [ ] EXTENDING DATES  
 AND DEADLINES RE CLASS  
 CERTIFICATION PHASE**

**Complaint Filed: March 2, 2011**

**STIPULATION**

1  
2 Plaintiff BRIAN GRAIFMAN (including any and all other persons that he may be  
3 determined to represent) (“Plaintiff”) and Defendant TREND MICRO INC. (USA) (“Trend Micro”),  
4 by and through their respective counsel, enter into this Stipulation.

5 **WHEREAS**, on December 9, 2011, the Parties filed a Stipulation and Order Extending Time  
6 to Respond to First Amended Complaint and Discovery, providing that Defendant was to answer  
7 Plaintiff’s Amended Complaint and serve responses to Plaintiff’s Revised First Set of Requests for  
8 Production of Documents and Revised First Set of Interrogatories by December 28, 2011.

9 **WHEREAS**, the Court approved the December 9, 2011 Stipulation referred to above and  
10 entered an order thereon on January 10, 2012 (Dkt. No. 51) (“the January 10 Scheduling Order”).

11 **WHEREAS**, on December 28, 2011, Trend Micro served its Responses and Objections to  
12 Plaintiff’s Revised First Set of Requests for Production of Documents and Revised First Set of  
13 Interrogatories.

14 **WHEREAS**, Trend Micro served an expert report on Plaintiff on January 13, 2012 that  
15 included a survey by the expert.

16 **WHEREAS**, Trend Micro began production of documents on a rolling basis as of  
17 January 23, 2012, and, based on the information then available to it, believed that as of February 24,  
18 2012 it had completed the production of the majority of the documents that it has agreed to produce;  
19 that locating and collecting further documents that may be within the categories of documents that  
20 Trend Micro had agreed to produce took longer than expected for a variety of reasons, including, but  
21 not limited to, the fact that Trend Micro had to restore and search one or more decommissioned  
22 servers in a foreign country and search for email files dating back many years, including email files  
23 of employees who no longer work for said defendant; and, that Trend Micro contends that the  
24 production of such class-related documents requested by Plaintiff and which Trend Micro agreed to  
25 produce was completed by April 23, 2012.

26 **WHEREAS**, on March 21, 2012 the Parties filed a Stipulation and Order [Proposed]  
27 Extending Time to Respond to Discovery, which, among other things, extended the then unexpired  
28 set forth in the January 10, 2012 Scheduling Order; and, on March 28, 2012 the Court approved such

1 March 21 Stipulation and entered an order thereon on March 28, 2012 (Dkt. No. 55) (“the March 28  
2 Scheduling Order”).

3 **WHEREAS**, Plaintiff’s counsel contended that they could not conduct depositions of  
4 Defendant’s expert, nor the witnesses interviewed by Defendant’s expert, until Plaintiff reviewed all  
5 documents that Trend Micro produces; and, further, that they cannot properly prepare an expert  
6 rebuttal report until the depositions of the witnesses interviewed by Defendant’s expert were,  
7 completed, which contentions have been disputed by Trend Micro.

8 **WHEREAS**, to resolve that particular dispute Trend Micro agreed to voluntarily produce the  
9 witnesses interviewed by Defendant’s expert for deposition by May 14, 2012 and that Plaintiff  
10 would produce its expert rebuttal report by May 23, 2012; and, it was Trend Micro’s intent and  
11 understanding of such agreement to voluntarily produce such witnesses was that the scope of such  
12 “pre-rebuttal report” depositions would be limited solely to the information that was discussed  
13 between such witnesses and Defendant’s expert, the parties also agreeing that any further depositions  
14 would be conducted after the Plaintiff submitted its expert rebuttal report.

15 **WHEREAS**, a dispute has arisen between Plaintiff and Trend Micro as to the scope of the  
16 agreement relating to the “pre-rebuttal report” depositions. Trend Micro contends that the agreement  
17 to voluntarily produce the witnesses for such “pre-rebuttal report” depositions was conditioned on  
18 Plaintiff’s agreement that such depositions are limited solely to the information that was discussed  
19 between such witnesses and Defendant’s expert; Plaintiff does not agree with this contention.

20 **WHEREAS**, on May 11 - 17 , 2012 the counsel for the parties met and conferred on this  
21 dispute, both by telephone and by email and have reached an agreement as to the scope of the “pre-  
22 rebuttal report” depositions referred to above.

23 **WHEREAS**, in light of such dispute Plaintiff needs further time to complete Plaintiff’s  
24 expert’s rebuttal report; and, due to conflicting commitments, counsel for the parties need further  
25 time to complete the other deadlines for the class certification phase set forth in the March 28  
26 Scheduling Order.

1           WHEREAS, in light of the above facts, and hoping to avoid the necessity of filing a motion,  
2 the Parties are stipulating to the extensions set forth below from the dates set forth in ¶ 3.a. – g., of  
3 the Court’s March 28 Scheduling Order.

4                           **IT IS THEREFORE STIPULATED** that:

5           1.       The dates and deadlines for the class certification phase of this action and as set forth  
6 in the January 10, 2012 Scheduling Order at ¶ 3.a.-g., are extended as follows:

- 7                   a.    Designation of Rebuttal Class Certification Experts – from May 23, 2012 to  
8                           **June 6, 2012;**
- 9                   b.    Close of Class Certification Discovery – from June 22, 2012 to **July 23, 2012;**
- 10                  c.    Filing of Class Certification motion –from July 13, 2012 to **August 13, 2012;**
- 11                  d.    Filing of Opposition to Class Certification motion – from August 13, 2012 to  
12                           **September 13, 2012;**
- 13                  e.    Filing of Reply to Class Certification motion – from September 13, 2012,  
14                           2012 to **October 15, 2012;**
- 15                  f.    Hearing on class certification motion – from October 12, 2012 to  
16                           **November 9, 2012.**

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 21, 2012

BAKER & MCKENZIE LLP

By: /s/ Tod L. Gamlen  
Tod L. Gamlen  
Attorneys for Defendant  
TREND MICRO, INC. (USA) sued herein  
as TREND MICRO, CORPORATION

Dated: May 21, 2012

STULL, STULL & BRODY

By: /s/ Timothy J. Burke  
Timothy J. Burke  
Attorneys for Plaintiff  
BRIAN GRAIFMAN

**ATTESTATION OF CONCURRENCE BY TOD L. GAMLEN**

I, Tod L. Gamlen, hereby attest that I am one of the attorneys for Trend Micro Incorporated (USA), and, as the ECF user and filer of this document, I attest that, pursuant to General Order No. 45(X)(B), concurrence in the filing of this document has been obtained from Timothy J. Burke, the above signatory.

Dated: May 21, 2012

By: /s/ Tod L. Gamlen

**ORDER []**

Pursuant to stipulation IT IS SO ORDERED.

Dated: May \_\_, 2012

  
UNITED STATES DISTRICT COURT JUDGE