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20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA  
22 WESTERN DIVISION

23 In re MATTEL, INC., TOY LEAD  
24 PAINT PRODUCTS LIABILITY  
LITIGATION

No. 2:07-ml-01897-DSF-AJW  
ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT

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26  
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1 WHEREAS, Plaintiffs in the above-captioned multidistrict litigation pending  
2 before the Court (the “Action”) and Mattel, Inc. have entered into a Stipulation of  
3 Class Action Settlement (the “Agreement” or “Stipulation”) after extensive,  
4 arms-length settlement negotiations, including mediation with Hon. Daniel J.  
5 Weinstein (ret.) of JAMS;

6 WHEREAS, the Parties have made an application, pursuant to Federal Rule  
7 of Civil Procedure 23(e) for an order preliminarily approving the settlement of this  
8 Action upon the terms and conditions set forth in the Agreement; and

9 WHEREAS, the Court has reviewed and considered the Agreement and  
10 accompanying Exhibits, and the Parties’ application for such an order and found  
11 good cause for same;

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

13 **A. The Settlement Class**

14 1. Pursuant to Federal Rule of Civil Procedure 23(c)(1) and for purposes  
15 of the Settlement only, the Court hereby conditionally certifies this Action as a  
16 class action on behalf of the following Settlement Class:

17 All Persons who (a) purchased or acquired (including by  
18 gift) a new Recalled Toy (as defined in the Agreement)  
19 for or on behalf of themselves or a minor child over  
20 whom they have custody and control as a parent or  
21 guardian, or to be given as a gift to another Person; or  
22 (b) are the parent or guardian of a minor child who  
23 purchased or acquired (including by gift) a new Recalled  
24 Toy. Excluded from the Settlement Class are: (1) all  
25 Persons who purchased or acquired a Recalled Toy for  
26 resale, or purchased or acquired a used Recalled Toy;  
27 (2) all Defendants and their affiliated entities, legal  
28 representatives, successors and assigns; (3) any Person  
who files a valid, timely Request for Exclusion; and  
(4) the Judges to whom this Action is assigned and any  
members of their immediate families.

1           2.     The Court preliminarily finds that the prerequisites for a class action  
2 under Federal Rules of Civil Procedure 23(a) and (b)(3) have been met, in that:  
3 (a) the Settlement Class is so numerous that joinder of all individual Settlement  
4 Class Members is impracticable; (b) there are questions of law and fact common to  
5 the Settlement Class, which questions predominate over individual questions;  
6 (c) the claims of the Class Representatives are typical of the Settlement Class;  
7 (d) the Class Representatives and Co-Lead Counsel will fairly and adequately  
8 represent the interest of the Settlement Class; and (e) a class action is superior to  
9 other available methods for the fair and efficient adjudication of the issues relating  
10 to the Settlement.

11           3.     Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court  
12 hereby appoints the named Plaintiffs in the Second Consolidated Amended  
13 Complaint filed in the Action as Class Representatives of the Settlement Class.

14           4.     Having considered the factors set forth in Rule 23(g)(1) of the Federal  
15 Rules of Civil Procedure, and having found Co-Lead Counsel to be adequate, the  
16 Court hereby appoints Co-Lead Counsel as Class Counsel to represent the  
17 Settlement Class.

18           5.     The Court, having conducted a preliminary assessment of the fairness,  
19 reasonableness, and adequacy of the Agreement, hereby finds that the Settlement  
20 falls within the range of reasonableness meriting further proceedings and possible  
21 final approval. The Court hereby preliminarily approves the Agreement, and the  
22 terms and conditions of the Settlement set forth therein, subject to further  
23 consideration in the Final Approval Hearing described below.

24 **B.     The Final Approval Hearing**

25           6.     Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the  
26 Court will hold a Final Approval Hearing on March 15, 2010 at 1:30 p.m., for the  
27 purposes of:  
28

1 (a) Finally determining whether the Settlement Class meets all  
2 applicable requirements of Federal Rule of Civil Procedure 23 and, thus, whether  
3 the Action should be certified as a class action for purposes of effectuating the  
4 Settlement;

5 (b) Determining whether the Settlement on the terms and  
6 conditions set forth in the Agreement, is fair, just, reasonable, and adequate to the  
7 Settlement Class and should be approved by the Court;

8 (c) Considering the application of Co-Lead Counsel for an award  
9 of attorneys' fees and reimbursement of expenses, as provided for in the  
10 Agreement;

11 (d) Considering the application of the Class Representatives for  
12 Incentive Awards, as provided for in the Agreement;

13 (e) Considering whether the Court should enter the [Proposed]  
14 Final Judgment of Dismissal with Prejudice dismissing the Action and all  
15 Constituent Actions with prejudice and the [Proposed] Order Approving Class  
16 Action Settlement; and

17 (f) Ruling upon such other matters as the Court may deem  
18 necessary and appropriate.

19 7. The Parties may modify the Agreement prior to the Final Approval  
20 Hearing, so long as such modifications do not materially change the terms of the  
21 Settlement provided thereunder. The Court may approve the Agreement with such  
22 modifications as may be agreed to by the Parties, if appropriate, without further  
23 notice to the Settlement Class.

24 8. Any Settlement Class Member who desires to object to the  
25 Settlement, the application for Attorneys' Fees and Expenses, or Plaintiffs'  
26 Incentive Awards must submit to the Claims Administrator and serve on the  
27 Parties' counsel by hand or first-class mail a notice of the objection(s) and the  
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1 grounds for such objections, together with all papers that the Settlement Class  
 2 Member desires to submit for the Court’s consideration at the Final Approval  
 3 Hearing. The Court will consider such objection(s) and papers only if such papers  
 4 are received on or before twenty-one (21) days prior to the Final Approval Hearing  
 5 (the “Opt-Out and Objection Date”), which shall be set forth in the Class Notices,  
 6 by the Claims Administrator and by each of the Parties’ counsel. Such papers must  
 7 be sent to each of the following Persons:

8 Gilardi & Co. LLC P.O. Box 8060 9 San Rafael, CA 94912-9960  10 11 12	Rachel L. Jensen Coughlin Stoia Geller Rudman & Robbins LLP 655 West Broadway, Suite 1900 San Diego, California 92101  Elizabeth Rosenberg Whatley, Drake & Kallas, LLC 1540 Broadway, 37th Floor New York, New York 10036
13 14 Hugh R. Whiting Jones Day North Point 901 Lakeside Avenue Cleveland, Ohio 44114 16 17 Michael L. Rice Jones Day 2727 North Harwood Street 18 Dallas, Texas 75201-1515	

19 9. All objections must include a reference to *In re Mattel, Inc., Toy Lead*  
 20 *Paint Products Liability Litigation*, No. 2:07-ml-01897-DSF-AJW (C.D. Cal.), the  
 21 name, address, and telephone number of the Person submitting the objection,  
 22 documentary evidence establishing the purchase or acquisition of a new Recalled  
 23 Toy, and the submitting Person’s signature. Each Person submitting an objection  
 24 must state whether he or she (or his or her representative) intends to appear at the  
 25 Final Approval Hearing.

26 10. Any response to timely, completed objections must be filed with the  
 27 Court and served no later than seven (7) days prior to the Final Approval Hearing.  
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1           11. Attendance at the hearing is not necessary; however, any Person  
2 wishing to be heard orally with respect to approval of the Settlement, the  
3 application for Attorneys' Fees and Expenses, or the application for Plaintiffs'  
4 Incentive Awards, are required to provide written notice of their intention to appear  
5 at the Final Approval Hearing no later than the Opt-Out and Objection Deadline as  
6 set forth in the Class Notices. Persons who do not intend to oppose the Settlement,  
7 Attorneys' Fees and Expenses or Incentive Awards need not take any action to  
8 indicate their approval. A Person's failure to submit a written objection in  
9 accordance with the Opt-Out and Objection Deadline and the procedure set forth in  
10 the Class Notices waives any right the Person may have to object to the Settlement,  
11 Attorneys' Fees and Expenses, or Incentive Awards, or to appeal or seek other  
12 review of the Final Judgment or the Order Approving Class Action Settlement.

13           12. Any Member of the Settlement Class may enter an appearance in the  
14 Actions at his or her own expense, individually or through counsel. All Settlement  
15 Class Members who do not enter an appearance will be represented by Co-Lead  
16 Counsel.

17           13. All papers in support of the Settlement and any application for an  
18 award of Attorneys' Fees and Expenses and/or Incentive Awards must be filed  
19 with the Court and served at least seven (7) days prior to the Final Approval  
20 Hearing.

21 **C. The Court Approves the Form and Method of Class Notice**

22           14. The Court approves, as to form and content, the proposed Class  
23 Notices, which are Exhibits B, C and L respectively, to the Stipulation.

24           15. The Court finds that the mailing and distribution of the Class Notices  
25 substantially in the manner and form set forth in the Notice Program submitted by  
26 the Parties, which is Exhibit D to the Stipulation, meets the requirements of  
27 Federal Rule of Civil Procedure 23 and due process, is the best notice practicable  
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1 under the circumstances, and constitutes due and sufficient notice to all Persons  
2 entitled thereto.

3 16. The Court approves the designation of Gilardi & Co., LLC to serve as  
4 the Court-appointed Claims Administrator for the Settlement (the “Claims  
5 Administrator”). The Claims Administrator shall disseminate the Class Notices  
6 and supervise and carry out the Notice Program, the processing of Claims, and  
7 other administrative functions, and shall respond to Settlement Class Member  
8 inquiries, as set forth in the Settlement and this Order.

9 (a) The Court directs the Claims Administrator to establish a  
10 Settlement website, making available copies of this Order, the long-form Class  
11 Notice, a Claim Form that may be downloaded, the Agreement and all Exhibits  
12 thereto, FAQ, a toll-free hotline, and such other information as may be of  
13 assistance to Settlement Class Members or required under the Settlement. The  
14 Claim Form shall be made available to Settlement Class Members through the  
15 Settlement website and through the websites of Plaintiffs’ Co-Lead Counsel, no  
16 later than the Notice Date as defined below, and continuously thereafter through  
17 the Claims Deadline. Mattel shall provide a prominent link to the Settlement  
18 website on Mattel and Fisher-Price’s websites.

19 (b) Mattel and the Claims Administrator are ordered to provide  
20 Notice no later than eighty-five (85) days before the Final Approval Hearing (the  
21 “Notice Date”).

22 (c) The Claims Administrator shall file with the Court proof of  
23 compliance with the Notice Program no later than seven (7) business days prior to  
24 the Final Approval Hearing.

25 17. Mattel shall pay for all costs of the Notice Program, processing of  
26 Claims, creating and maintaining the website, and all other reasonable and  
27 appropriate Claims Administrator Expenses and Notice Expenses.

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1 **D. Procedure for Settlement Class Members to Participate in the**  
2 **Settlement**

3 18. All Settlement Class Members shall be bound by all determinations  
4 and judgments in the Action concerning the Settlement, whether favorable or  
5 unfavorable to the Settlement Class.

6 19. The Court approves the Parties' proposed Claim Form, which is  
7 Exhibit E to the Stipulation. Any Settlement Class Member who wishes to  
8 participate in the Settlement shall complete an appropriate Claim Form in  
9 accordance with the instructions contained therein and submit it to the Claims  
10 Administrator within seventy-five (75) days after entry of the Final Judgment and  
11 the Order Approving Class Action Settlement ("Claims Deadline"). Such deadline  
12 may be further extended by Court order.

13 20. The Claims Administrator shall have the authority to accept or reject  
14 Claims in accordance with the terms and conditions of the Settlement. Any dispute  
15 related to such determinations shall be resolved by the Court after a good-faith  
16 effort by the Parties to resolve such disputes informally. The Claims Administrator  
17 shall have the right to contact Settlement Class Members for the purpose of  
18 validating Claims. The Claims Administrator shall maintain records of all Claims  
19 submitted and the disposition thereof until the later of the date on which all Claims  
20 have been finally resolved or ninety (90) days after the Effective Date, and such  
21 records will be made available, upon request, to Co-Lead Counsel and Mattel's  
22 counsel. However, Claim Forms that seek lead testing reimbursement and  
23 supporting documents will be kept confidential by the Claims Administrator, shall  
24 be used solely for the purpose of validating the Claims made, and shall be provided  
25 only to the Court upon request and to Co-Lead Counsel and Mattel's Counsel to  
26 the extent necessary to resolve issues pursuant to this Order.

1           21. Any Recalled Toy that is returned to Mattel in connection with the  
2 submission of a Claim shall become the property of Mattel. In the event that the  
3 Settlement is not finally approved by the Court, Mattel shall provide all Settlement  
4 Class Members who returned Recalled Toys with the relief specified by the terms  
5 of the Recalls identified in Exhibit A to the Stipulation.

6           22. Each Person who submits a Claim Form shall be deemed to have  
7 submitted to the jurisdiction of the Court with respect to the Claim and shall be  
8 bound by all of the terms of the Settlement, including the terms of the Final  
9 Judgment and the Order Approving Class Action Settlement to be entered  
10 concurrently in the Action and the Releases provided for in the Agreement, and  
11 will be subject to the Covenant Not To Sue as defined in the Agreement.

12           23. All proceedings with respect to the administration, processing, and  
13 determination of Claims submitted by Settlement Class Members pursuant to the  
14 Agreement and Exhibits thereto, and the determination of all controversies relating  
15 thereto, including disputed questions of law and fact with respect to the validity of  
16 claims, shall be subject to the jurisdiction of the Court.

17 **E. Procedure for Requesting Exclusion from the Settlement Class**

18           24. Any Person falling within the definition of the Settlement Class may,  
19 upon his or her request, be excluded from the Settlement Class. Any such Person  
20 must submit a completed Request for Exclusion, signed by the Person, to the  
21 Claims Administrator post-marked on the date no later than the Opt-Out and  
22 Objection Date (*i.e.*, twenty-one (21) days prior to the Final Approval Hearing), as  
23 set forth in the Class Notices. Requests for Exclusion purportedly filed on behalf  
24 of groups of Persons are prohibited and will be deemed to be void.

25           25. Any Settlement Class Member who does not send a completed, signed  
26 Request for Exclusion to the Claims Administrator post-marked on or before the  
27 Opt-Out and Objection Deadline will be deemed to be a Member of the Settlement  
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1 Class for all purposes and will be bound by all further orders of the Court in this  
2 Action and by the terms of the Settlement, if finally approved by the Court. All  
3 Persons who submit valid and timely Requests for Exclusion in the manner set  
4 forth in the Agreement shall have no rights under the Agreement and shall not be  
5 bound by the Agreement or the Final Judgment and the Order Approving Class  
6 Action Settlement.

7 26. The Claims Administrator shall provide Co-Lead Counsel and counsel  
8 for Mattel with a list of all timely Requests for Exclusion within five (5) business  
9 days after the Opt-Out and Objection Deadline.

10 **F. Miscellaneous Provisions**

11 27. Pending final determination of whether the Settlement should be  
12 approved, all discovery and all proceedings in the Action unrelated to the approval  
13 of the Settlement, the application for Attorneys' Fees and Expenses, the Motion to  
14 Dispose of Products, and the Application for Plaintiffs' Incentive Awards are  
15 stayed.

16 28. The Court retains exclusive jurisdiction to consider all further  
17 applications arising out of or connected with the proposed Settlement.

18 Dated: 10/23/09

IT IS SO ORDERED

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Hon. Dale S. Fischer  
24 United States District Judge