IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL M. MCDONOUGH, *et al*., Plaintiffs, v. TOYS "R" US, INC., d/b/a/ Babies "R" Us, *et al*., Defendants.	No. 2:06-cv-0242-AB
ARIEL ELLIOTT, *et al.*, Plaintiffs, v. TOYS "R" US, INC., d/b/a Babies "R" Us, *et al.*, Defendants.	No. 2:09-cv-06151-AB

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF FOURTH AMENDED SETTLEMENT, FOR CERTIFICATION OF SETTLEMENT CLASSES, AND FOR PERMISSION TO DISSEMINATE CLASS NOTICE

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I. INTRODUCTION

Plaintiffs in the *McDonough* and *Elliott* matters ("Plaintiffs") respectfully submit this memorandum in support of their motion for preliminary approval of the Fourth Amended Settlement Agreement ("Amended Settlement" or "Fourth Amended Settlement")[1] reached with Defendants Toys "R" Us, Inc., Babies "R" Us, Inc., Toys "R" Us-Delaware, Inc. (collectively, "BRU" or "Babies "R" Us"), BabyBjörn AB ("BabyBjörn"), Britax Child Safety, Inc. ("Britax"), Kids Line, LLC ("Kids Line"), American Baby Products, Inc. f/k/a Maclaren USA, Inc. ("Maclaren"), Medela, Inc. ("Medela"), Peg Perego U.S.A., Inc. ("Peg Perego"), and Regal Lager, Inc. ("Regal Lager")[2] (collectively "Defendants"). Following the Third Circuit's ruling vacating the Initial Settlement Agreement, Plaintiffs and Defendants vigorously negotiated, resulting in the Amended Settlement providing for 100% of the Net Settlement Fund to be distributed directly to the Settlement Classes. A copy of the Amended Settlement is attached as Exhibit 1.[3]

On Feb. 19, 2013, the Third Circuit vacated the district court's approval of a class action settlement[4] that included a *cy pres* provision because there was not sufficient information to determine whether the settlement provided an adequate direct benefit to the class members. *In re Baby Prods. Antitrust Litig*., 708 F.3d 163 (3d Cir. Feb. 19, 2013). The Initial Settlement provided for payment of approximately $18.5 million to the Settlement Classes after fees and costs, but only approximately $3 million would have been distributed to the Classes due to a low

[1] All Capitalized Terms in this memorandum will have the same meaning as set forth in the Amended Settlement.

[2] The "Manufacturer Defendants" are BabyBjörn, Britax, Kids Line, Maclaren, Medela, Peg Perego, and Regal Lager.

[3] All exhibits to the Amended Settlement are designated as Exhibits A-K. Ex. H to the Amended Settlement is filed under seal.

[4] *McDonough v. Toys "R" Us, Inc.*, 834 F. Supp. 2d 329 (E.D. Pa. 2011), *vacated*, 708 F.3d 163 (3d Cir. Feb. 19, 2013).

claims rate despite robust notice, leaving *cy pres* recipients with approximately $15.5 million. Although it joined the First and Ninth Circuits in generally approving the permissibility of *cy pres* provisions in class action settlements, the Third Circuit ultimately vacated the District Court's approval of the settlement, as well as the attorneys' fees awarded based on it, reasoning the District Court "did not know the amount of compensation that will be distributed directly to the class." *Id*. at 172-73, 175. The Third Circuit further emphasized that "direct distributions to the class are preferred over *cy pres* distributions." *Id*. at 173. The Third Circuit also held that, on remand, supplemental notice should be provided to the class if the settlement was materially altered. *Id*. at 182.

The Amended Settlement materially alters several significant terms to maximize the direct benefit to the Settlement Classes. In addition to payments to class members who previously submitted or now submit claims supported by documentary proof of purchase(s), all class members identified in BRU's purchase records will receive a direct payment without having to file a Claim Form. Based on the combination of claims and direct payments, the entire Net Settlement Fund will be distributed directly to the Settlement Class Members in the first distribution. *See* Amended Settlement, ¶¶ 18-21; *see also* Claim Form and Allocation Order, Exhibits D and F, ¶¶ 6(a), (b). Importantly, there is no payment to *cy pres* in the Amended Settlement. Instead, to the extent there are portions of the Settlement Fund remaining as a result of uncashed checks, unclaimed funds, or otherwise, such funds shall be paid to Defendants. *See* Amended Settlement, ¶ 20, Ex. F., ¶¶ 13-15. Upon such payment, fully transferrable coupons in a total cumulative amount up to the Final Remaining Amount paid to the Defendants shall be issued and distributed in a final second distribution to Settlement Class Members who have provided, or for whom the Claims Administrator already has, email addresses, and who have

cashed or deposited the portion of the Net Settlement Fund distributed to them, but who did not receive the maximum Enhanced Authorized Payment as defined in the Allocation Order. *Id.*, Ex. F, ¶¶ 7, 11-12, 14-16, Ex. I ("Coupons"). Moreover, a Notice, Publication Notice, Postcard Notice, E-Mail Notice and Claim Form will be provided to the Settlement Class Members, informing them of these material changes.

This Amended Settlement does not change, *inter alia*: (1) the Settlement Amount ($35,500,000); or (2) any other material term of the Settlement. This amended approach will maximize depletion of the Net Settlement Fund to the direct benefit of all known Settlement Class Members.

Plaintiffs seek preliminary approval of the Settlement on behalf of the following Settlement Subclasses defined below:

- "All persons who directly purchased any BabyBjörn baby carrier from Babies 'R' Us within the U.S. for the period February 2, 2000, to April 30, 2005. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("BabyBjörn Settlement Subclass");
- "All persons who directly purchased any Britax car seat from Babies 'R' Us within the U.S. for the period January 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Britax Settlement Subclass");
- "All persons who directly purchased any Maclaren stroller from Babies 'R' Us within the U.S. for the period October 1, 1999, to January 31, 2011. Excluded

from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Maclaren Settlement Subclass");

- "All persons who directly purchased any Medela Pump In Style breast pump from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Medela Settlement Subclass");
- "All persons who directly purchased any Peg Perego stroller from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego Stroller Settlement Subclass");
- "All persons who directly purchased any Peg Perego high chair from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego High Chair Settlement Subclass");
- "All persons who directly purchased any Peg Perego car seat from Babies 'R' Us within the U.S. during the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego Car Seat Settlement Subclass"); and

- "All persons who directly purchased any Kids Line Product from Babies 'R' Us within the U.S. for the period January 1, 1999, to December 31, 2006. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Kids Line Settlement Subclass").

Accordingly, this Court should preliminarily approve the Amended Settlement, certify the Settlement Classes, and authorize the notice plan.

II. BACKGROUND

A. Background of the Litigation

The *McDonough* case commenced in January 2006 when certain consumers claimed that BRU, which is alleged to be the nation's dominant baby product retailer, had conspired with the Manufacturers to restrict competition in violation of federal antitrust law. Plaintiffs alleged that, in a series of overlapping illegal agreements with BRU, conceived and implemented to fend off competition to BRU, the Manufacturer Defendants adopted or enforced resale price maintenance ("RPM") or internet sales policies which had the effect of causing higher prices to consumers and diminishing competition among retailers. As noted by the Court in its July 15, 2009, memorandum granting class certification, "[t]his case concerns how BRU responded to this competition" by internet and discounting competitors. *See* Court's Opinion of July 15, 2009, at 4 (*McDonough* Dkt. No. 585); *McDonough v. Toys "R" Us, Inc*., 638 F. Supp. 2d 461, 466-467 (E.D. Pa. 2009) (Brody, J.). In the litigation, Plaintiffs seek to recover the overcharges incurred by Plaintiffs and the putative classes due to Defendants' alleged violations of Section 1 of the Sherman Act.

Plaintiffs in the *McDonough* case zealously prosecuted this matter for five years. During the course of the action, Plaintiffs were faced with several rounds of pleadings testing the

sufficiency of the complaints under new standards espoused by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009),[5] the Supreme Court's decision rejecting the *per se* ban on RPM agreements and ruling that such agreements are to be judged under the rule of reason, *Leegin Creative Leather Prods. v. PSKS, Inc*., 551 U.S. 877 (2007), and a Third Circuit decision on class certification standards, *In re Hydrogen Peroxide Antitrust Litig*., 552 F.3d 305 (3d Cir. 2008). This Court granted class certification, in part, of the *McDonough* subclasses after a three-day evidentiary hearing in mid-2009. *McDonough*, 638 F. Supp. 2d at 491.

Subsequent to the Court's decision to grant class certification, in part, as to the *McDonough* subclasses, the *Elliott* Plaintiffs filed suit specifically to cover those time periods and Defendants for which certification was not granted. *See Elliott* Complaint (Dkt. No. 1).

Finally, in early 2010 in *McDonough*, the Court granted Defendants' motion to sever the trials by Defendant, and scheduled the first trial against BRU and Medela for January 2011. (Dkt. No. 662).

B. Initial Settlement

It was not until after four years' worth of pleadings testing the sufficiency of the complaints, full class certification proceedings and the Court's setting of a trial date that the parties even engaged a mediator in an attempt to negotiate a settlement. From May 2010 until the signing of the Initial Memorandum of Understanding on September 29, 2010, the parties engaged Professor Eric Green to help mediate these matters. An Initial Settlement Agreement was signed on January 21, 2011.

[5] *See Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp. 2d 575 (E.D. Pa. 2008) (Brody, J.).

Under the Initial Settlement, each Settlement Class Member was required to submit a verified claim form with a sworn affidavit with or without documentary proof of the necessary purchase(s) of one or more Settlement Products to be eligible to be paid from any Individual Settlement Fund. Under the Initial Settlement and allocation plan, claimants were entitled to different compensation amounts depending on the documentary proof submitted. Depending on the number of claims submitted for payment from each Individual Settlement Fund, each claim could be subject to certain pro rata enhancements or reductions. If the claims submitted did not exhaust an Individual Settlement Fund, the claims may have been enhanced up to three times the authorized claims. Any Final Excess Amount would be paid *cy pres* to charities.

C. Appeal and Fourth Amended Settlement Providing for Direct Payments

On or about December 21, 2011, the District Court approved the proposed Initial Settlement Agreement and overruled all objections to the Initial Settlement. Thereafter, certain objectors appealed the denial of their objection to the United States Court of Appeals for the Third Circuit. On February 19, 2013, the Third Circuit vacated the District Court's approval of the proposed Initial Settlement and remanded the case to the District Court. *See In re Baby Prods. Antitrust Litig.*, 708 F.3d at 170. The Third Circuit reasoned that the District Court did not have sufficient information to determine whether the Initial Settlement conferred adequate direct benefit to the class claimants. *Id*. at 175. Under the Initial Settlement, approximately $18.5 million was available for distribution to the Classes after fees and costs, but only approximately $3 million would have been ultimately distributed to the Class as the result of the claims-made recovery process, leaving *cy pres* recipients with approximately $15.5 million. *Id*. at 171, 175.

The Third Circuit considered "for the first time the use of *cy pres* distributions in class action settlements." *Id.* at 169. Although the Third Circuit joined the First and Ninth Circuits in

generally approving the permissibility of *cy pres* provisions in class action settlements, the Court ultimately vacated the district court's approval of the settlement, as well as the attorneys' fees awarded based on it, reasoning the District Court "did not know the amount of compensation that will be distributed directly to the class." *Id*. at 172-73, 175. The Third Circuit further cautioned "that direct distributions to the class are preferred over *cy pres* distributions." *Id*. at 173.

The Third Circuit cautioned that, on remand, the District Court should "reconsider the fairness of the settlement," stating:

> The parties may wish to alter its terms on remand to provide greater direct benefit to the class, such as by increasing the $5 payment or lowering the evidentiary bar for receiving a higher award. After allowing them that opportunity, we ask the Court to make the factual findings necessary to evaluate whether the settlement provides sufficient direct benefit to the class.

Id. at 175-76. Following the Third Circuit's order, the parties vigorously renegotiated the Initial Settlement, with Plaintiffs particularly focused on ensuring direct distributions to the Subclasses. The final product of numerous rounds of negotiations is an Amended Settlement that is clearly within the range of possible final approval, complies with the Third Circuit's instruction to maximize the direct benefit to the Settlement Class Members, and thus easily meets the standard for preliminary approval.

III. MATERIAL TERMS OF PROPOSED AMENDED SETTLEMENT

A. Class Benefits

Under the proposed Amended Settlement, Defendants will provide significant, direct monetary benefits to Authorized Claimants in the Settlement Subclasses[6] defined as follows:

[6] Excluded from the Settlement Class will be all persons who validly and timely requested exclusion from the Initial Settlement (and do not revoke that request for exclusion) or now request exclusion from the Class in accordance with this Court's order granting preliminary approval of the Amended Settlement and directing the dissemination of class notice. (Amended Settlement, ¶ 31).

- "All persons who directly purchased any BabyBjörn baby carrier from Babies 'R' Us within the U.S. for the period February 2, 2000, to April 30, 2005. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("BabyBjörn Settlement Subclass");

- "All persons who directly purchased any Britax car seat from Babies 'R' Us within the U.S. for the period January 1, 1999, to January 1, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Britax Settlement Subclass");

- "All persons who directly purchased any Maclaren stroller from Babies 'R' Us within the U.S. for the period October 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Maclaren Settlement Subclass");

- "All persons who directly purchased any Medela Pump In Style breast pump from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Medela Settlement Subclass");

- "All persons who directly purchased any Peg Perego stroller from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego Stroller Settlement Subclass");

- "All persons who directly purchased any Peg Perego high chair from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego High Chair Settlement Subclass");

- "All persons who directly purchased any Peg Perego car seat from Babies 'R' Us within the U.S. during the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over

this matter and the members of their immediate families and judicial staffs" ("Peg Perego Car Seat Settlement Subclass");

- "All persons who directly purchased any Kids Line Product from Babies 'R' Us within the U.S. for the period January 1, 1999, to December 31, 2006. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Kids Line Settlement Subclass").

Two distributions to Authorized Claimants are authorized under the Amended Settlement. In the first distribution, each Authorized Claimant who either files or previously filed a valid Claim Form and who submits or has submitted documents that the Claims Administrator determines are valid proof of purchase and purchase price shall be entitled to a payment from the Individual Settlement Fund(s) for which he or she is eligible in the amount of 20 percent of his or her actual purchase price of each Settlement Product, subject to the pro rata reductions or enhancements. *See* Amended Settlement, ¶¶ 18-21; *see also* Claim Form and Allocation Order, Exs. D and F, ¶ 6(a) to the Amended Settlement. And each Authorized Claimant (i) who files or previously filed a valid Claim Form with supporting documentary proof of purchase(s) but without proof of his or her actual purchase price, or (ii) for whom BRU has provided records of a valid proof of purchase to the Claims Administrator, shall be entitled to a payment from the Individual Settlement Fund(s) for which he or she is eligible in the amount of twenty percent (20%) of the estimated retail price (the "ERP") of each Settlement Product, subject to the pro rata reductions or enhancements. (Ex. F, ¶ 6(b)).

Next, to the extent there are portions of the Settlement Fund remaining as a result of uncashed checks, unclaimed funds or otherwise, such funds shall be paid to Defendants ("Final Remaining Amount"). *See* Amended Settlement, ¶ 20, Ex. F, ¶¶ 13-15. Upon such payment, Coupons in a total cumulative amount up to the Final Remaining Amount shall be issued and distributed to Authorized Claimants, via a second distribution, who have provided, or for whom

the Claims Administrator already has, email addresses, and who have cashed or deposited the portion of the Net Settlement Fund distributed to them, but who did not receive the maximum Enhanced Authorized Payment as defined in the Allocation Order. *Id*., Ex. F, ¶¶ 7, 11-12, 14-16, Ex. I. Once distributed, the Coupons are fully transferrable.

In total, Defendants have paid $35.5 million in cash ("Settlement Amount") into an escrow account as a designated Settlement Fund. (*See* Amended Settlement, II ¶¶ 1(dd), 11). The Settlement Amount, after payment of certain fees and expenses, will be allocated among the Settlement Classes according to the percentage of the total damages for which Plaintiffs allege each Defendant accounts. At Final Approval, Plaintiffs will request that the Court allocate the Net Settlement Fund among the Settlement Classes as follows:

- BabyBjörn Settlement Class: 6%
- Britax Settlement Class: 28%
- Maclaren Settlement Class: 7%
- Medela Settlement Class: 22%
- Peg Perego Stroller Settlement Class: 9%
- Peg Perego High Chair Settlement Class: 4%
- Peg Perego Car Seat Settlement Class: 3%
- Kids Line Settlement Class: 21%

("Individual Settlement Funds"). (*See* Proposed Allocation Order, Ex. F, ¶ 3).[7] In the first distribution, 100% of the Net Settlement Fund will be distributed to Settlement Class Members. *See* Amended Settlement, ¶¶ 18-21; *see also* Claim Form and Allocation Order, Exs. D and F,

[7] Subject to the approval of the Court, allocation of the Settlement Fund among the Settlement Classes is based on, among other things, the alleged percentage overcharge as calculated by Plaintiffs' damages experts per product, the relevant time period, the evidence developed to date, risks of litigation, and likelihood of recovery.

¶ 6(a) to the Amended Settlement. Instead of payment to *cy pres*, to the extent there are portions of the Settlement Fund remaining as a result of uncashed checks, unclaimed funds or otherwise, such funds shall be paid to Defendants. Upon such payment, fully transferrable Coupons in a total cumulative amount up to the Final Remaining Amount paid to Defendants shall be issued and distributed to Settlement Class Members who already accepted an initial payment that is less than the maximum payment permitted under the Allocation Order and who have provided, or for whom the Claims Administrator already has, email addresses. Amended Settlement, ¶ 20, Ex. F, ¶¶ 7, 11-12, 14-16, Ex. I.

B. The Proposed Amended Class Notice Plan is Reasonable

Upon preliminary approval of the Amended Settlement, Settlement Trustees are responsible for advancing funds adequate to pay to notify Class Members of the Amended Settlement benefits and related administrative expenses. *See* Amended Settlement, ¶¶ 15, 30. Plaintiffs have selected a qualified third-party settlement administrator, The Garden City Group, Inc. ("GCG"), to update Class Members' addresses, provide notice of the Amended Settlement to class members in the form of E-Mail Notice to those Class Members for whom GCG has E-Mail addresses and Postcard Notice for those Class Members for whom GCG does not have E-Mail addresses, but for whom GCG has mailing addresses, issue Publication Notice, provide electronic addressing that links to a landing page www.babyproductsantitrustsettlement.com where an electronic downloadable version of the Notice and Claim Form may be found, receive exclusion requests, process Class Members' claims, respond to Class Member inquiries, issue settlement checks to Class Members, and conduct other activities relating to Class Notice and settlement administration under the parties' supervision. (*See* Amended Settlement, II ¶ 1(e)). GCG will also be responsible for issuing Coupons to those Class Members that are to receive them.

Plaintiffs have also retained an expert on Class Notice, Lael D. Dowd of GCG, to develop a notice plan that meets the requirements of due process. (Declaration of Lael D. Dowd ("Dowd Decl."), attached as Ex. 2). As set forth in the Dowd Declaration, Garden City Group composed a notice program designed to reach at least 77 percent of the Settlement Subclass Members. (Dowd Decl., ¶ 18). The notice program includes:

- Direct Mail and/or E-mail Notice to those Settlement Subclass Members for whom BRU provided addresses;
- Publication of a short-form notice ("Summary Notice") in these nationally circulated magazines: Parents Magazine, People and Sports Illustrated;
- Internet based notice through banner ads posted onXaxis, f/k/a Real Media Network (a network which includes 2,500 websites covering news, family, entertainment and women's interests, among others), Facebook, Yahoo, AOL Mail, and Univision (in Spanish);
- A traditional press release issued through PR Newswire in both English and Spanish;
- An informational website (www.babyproductsantitrustsettlement.com), on which the notices and other important Court documents will be posted; and
- A toll-free information line where Settlement Subclass Members can call for more information and request copies of the claim packet.

(Dowd Decl., ¶ 11).

The Long-Form Notice, which will be available on the Settlement Website or by mail by request, describes the material terms of the proposed Amended Settlement and the procedures for each class member to receive the benefits under the Amended Settlement. Ex. B. For example, those Settlement Class Members who previously submitted a valid Claim Form with supporting documentary proof of purchase(s) or who have been identified from BRU's records, need not submit a new Claim and are entitled to payment. Those Settlement Class Members who previously submitted a Claim Form but who failed to provide documentary proof of purchase(s) will be notified that they need to re-submit a Claim Form with supporting documentation in

order to be entitled to payment. The discussion of "Settlement Benefits" describes how 100% of the Net Settlement Fund will be distributed in the Initial Distribution to Class Members and, to the extent there are portions of the Settlement Fund remaining as a result of uncashed checks, unclaimed funds or otherwise, such funds will be paid to Defendants. The "Settlement Benefits" discussion further describes how, upon such payment, fully transferrable Coupons in a total cumulative amount up to the Final Remaining Amount paid to Defendants shall be issued and distributed to Settlement Class Members. *Id*. at 5-6.

The Long Form Notice also describes the procedures for Settlement Subclass Members to exclude themselves from the Amended Settlement and to provide comments in support of or in objection to the Amended Settlement. *Id*. Any Settlement Subclass Member who previously wished or now wishes to be excluded from the settlement can opt-out by making a timely request. The procedures for opting-out are those commonly used in class action settlements and are straightforward and clearly described in the amended class notice. *Id*.

In addition, short-form or "Summary Notice" will be sent directly to known Subclass Members via postcard and e-mail notices. Exs. J-1, J-2 and K to the Amended Settlement. Summary Notice will similarly be included in the publication notice program. Ex. C to the Amended Settlement. The short-form notice discusses how Settlement Funds will be distributed among members of the respective Settlement Subclasses who did not or do not now request exclusion and: (i) who file a valid Claim Form with supporting documentary proof of purchase(s); (ii) who previously filed a valid Claim Form with supporting documentary proof of purchase(s) in response to the Initial Settlement; or (iii) who have been identified from BRU's records. *Id*. For those Settlement Class Members who receive direct notice and fall under categories (ii) and (iii), they do not have to file a Claim Form to be eligible for direct

distribution. The postcard and e-mail notices further explain the procedures to exclude oneself from the Amended Settlement. *Id*.

If the Court grants final approval of the proposed Amended Settlement, after Settlement Subclass Members are notified and the time period for opt-out requests and objections expires, all Settlement Subclass Members who have not requested exclusion from the class will be deemed to have released all claims against Defendants related to any and all claims, including under federal or state antitrust or unfair competition law, arising from or related to the wholesale or retail pricing, discounting, marketing, advertising, distribution or sale of BabyBjörn baby carriers, Britax car seats, Kids Line Products, Maclaren strollers, Medela Pump in Style breast pumps, Peg Perego strollers, Peg Perego car seats, or Peg Perego high chairs (the "Released Claims"). (*See* Amended Settlement, ¶¶ 1(aa), 10). Released Claims do not include entirely unrelated claims such as allegations of false advertising or misrepresentations relating to the performance of the products purchased, personal injury, or breach of warranty or breach of contractual relationships relating to the performance of the products purchased. (*See* Amended Settlement, ¶ 10).

C. Attorneys' Fees and Incentive Awards

Under the Fourth Amended Settlement Agreement, Defendants have agreed not to oppose Plaintiffs' request for reimbursement of Class Counsel's attorneys' fees not to exceed 33 1/3 percent of the Settlement Fund and expenses, payable from the Settlement Fund. Settlement Class Counsel will use their discretion to distribute the award among all Plaintiffs' counsel. *See* Amended Settlement, ¶ 26. These amounts will be subject to Court approval pursuant to Rule 23(h) and will serve to compensate Class Counsel for the time, risk, and expense they incurred pursuing Class Members' claims on their behalf. Defendants have also agreed not to oppose Class Counsel's request for an incentive award of up to $2,500 for each of the Settlement

Subclass Representatives, payable from the Settlement Fund. *See* Amended Settlement, ¶ 26; *see also* Ex. G.

IV. ARGUMENT

A. A Reasonable, Amended Plan of Distribution Will Provide Maximum Depletion of Settlement Funds through Direct Payments to Settlement Class Members

1. Direct payments to Settlement Class Members who submit, or submitted a valid Claim Form with supporting documentary proof of purchase(s) or who have been identified from the BRU's records.

The revisions to the proposed plan of distribution ensure that the number of direct payments to Settlement Class Members will be maximized. As the Third Circuit noted, "[t]hough the parties contemplated that excess funds would be distributed to charity after the bulk of the settlement fund was distributed to class members through an exhaustive claims process," the actual allocation in that case appeared to "be just the opposite," with an estimate of only approximately $3 million being directly distributed to class members. *In re Baby Prods. Antitrust Litig.*, 708 F.3d at 169. As a result, that Court remanded to permit the district court to "consider whether [the] settlement provides sufficient direct benefit to the class before giving its approval." *Id.* at 170.

In order to satisfy the goal of maximizing direct payment to Settlement Class Members, the parties agreed to an amended plan of distribution to Settlement Class Members. A district court's "principal obligation" in approving a plan of allocation "is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (citing *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)), *cert. denied*, __ U.S. __, 132 S. Ct. 1876, 182 L. Ed. 2d 646 (2012). Moreover, "[a]n allocation formula need only have a reasonable, rational basis, particularly if

recommended by experienced and competent class counsel." *In re American Bank Note Holographics*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001).

Specifically, Plaintiffs propose distributing direct payments to Settlement Class Members who submit or have previously submitted a claim with supporting documentary proof of purchase(s) and those who have been identified from BRU's records as a Class Member. These efforts will ensure that the Net Settlement Fund will be fully distributed to Class Members.

This proposal has a reasonable, rational basis: to ensure that Settlement Class Members for which both the Claims Administrator and Defendants have verified records participate in the Amended Settlement. Courts have similarly approved direct distributions to Class Members. Indeed, *In re Bayer Corp. Combination Aspirin Prods. Mktg. & Sales Practices Litig*., No. 09-md-2023(BMC)(JMA) (Final Order), at 12 (E.D.N.Y April 11, 2013), the court found the amended allocation plan, which provided for direct distributions, "fair, adequate and reasonable because it addresses the low rate of claims received to date and increases Class Member participation in the Settlement." In that case, authorized claimants who could be identified directly from purchase records were also entitled to payments. *Id*. Here, despite extensive publication and direct notice efforts, the claims rate in the Initial Settlement was low. Given the low claims rate, and the existence of BRU's purchaser records that can identify Class Members, it is fair to use BRU's records to ensure that payments are made directly to Class Members. The Amended Settlement provides that, after the Net Settlement Fund is 100% distributed from the claims and direct payments, any uncashed amounts will also be distributed to certain Settlement Class Members through a second distribution in the form of Coupons.

The provision regarding the allocation of the Final Remaining Amount is standard to ensure that monies paid directly to Class Members are maximized. *In re Metro. Life Ins. Co.*

Sales Practices Litig., No. 96-179, 1999 WL 33957871, at *1 (W.D. Pa. Dec. 28, 1999) (granting final approval of settlement where "rather than a reduction, it is likely that all Class Members will receive an increase in their applicable relief based on the 'spillover' of excess funds from the CRP Total Fund"). *See also Klier v. Elf Atochem N. Am., Inc*., 658 F.3d 468, 478 (5th Cir. 2011) (holding "that the district court erred when it rejected the settlement administrator's request that the funds be reallocated to the members of Subclass A," where the case involved a distribution protocol which "is an affirmation that funds initially allocated to a particular subclass are to be used, in the end, for the interests of the entire settlement class").

Accordingly, this Court should find the amended allocation of the Net Settlement Fund fair.

2. A review of the applicable factors favors approval of the Amended Settlement.

In vacating the Initial Settlement, the Third Circuit noted that the District Court should consider the nine factors set out in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), along with additional prudential inquiries set out in *In re Prudential Ins. Co. of Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998). *See In re Baby Prods. Antitrust Litig*., 708 F.3d at 174. To these factors the Third Circuit then added that an additional inquiry was to determine "the degree of direct benefit provided to the class." *Id*. It added that this inquiry needed to be practical in nature. *Id*.

The *Girsh* factors considered for final approval of a class settlement as "fair, reasonable and adequate" include: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement

in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Girsh*, 521 F.2d at 157. *See also Sullivan*, 667 F.3d at 319-26 (citing *Pet Food*, 629 F.3d at 350 and *Girsh*, 521 F.2d at 157). The settling parties must prove that the *Girsh* factors weigh in favor of approval of the settlement. *Sullivan*, 667 F.3d at 320.

1. *Complexity, Expense, and Likely Duration of the Litigation*. The first *Girsh* factor "captures the probable costs, in both time and money, of continued litigation." *Sullivan*, 667 F.3d at 320-21 (referencing *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 536 (3d Cir. 2004)). This case is complex, carries significant risks for all parties as to both legal and factual issues, and would consume a great deal of time and expense if the parties litigated it through the single Manufacturer trials envisioned by the Court. Moreover, extended motion practice "would not only further prolong the litigation but also reduce the value of any recovery to the class." *Warfarin*, 391 F.3d at 536. This factor favors approval of the Amended Settlement.

2. *The Reaction of the Class to the Settlement*. The second *Girsh* factor "attempts to gauge whether members of the class support the settlement," by considering the number of objectors and opt-outs and the substance of any objections. *Sullivan*, 667 F.3d at 321 (referencing *Prudential*, 148 F.3d at 318). Only a fraction of the Class objected to the Initial Settlement. The Court's Amended Memorandum approving the Initial Settlement noted only seven objections and forty-one requests for exclusion. This factor favors the Amended Settlement.

3. *The Stage of the Proceedings and the Amount of Discovery Completed*. The third *Girsh* factor "captures the degree of case development that class counsel had accomplished prior to settlement," and allows the court to "determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *Sullivan*, 667 F.3d at 321 (citing *Warfarin*, 391

F.3d at 537). The parties, through *McDonough*, conducted extensive discovery. This discovery included the review of over one million (1,000,000) pages of documents produced by the Defendants and third parties, over thirty (30) depositions of fact witnesses (excluding the additional depositions of Plaintiffs), a three-day evidentiary hearing on Plaintiffs' motion for certification of the *McDonough* Subclasses, and the exchange of reports by and depositions of testifying expert witnesses. In fact, at the time the parties began negotiations, discovery was closed, and the parties were preparing for summary judgment and trial. This factor favors the Amended Settlement.

4. *The Risks of Establishing Liability*. The fourth *Girsh* factor "examine[s] what the potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them." *Sullivan*, 667 F.3d at 322 (referencing *In re Cendant Corp. Litig.*, 264 F.3d 201, 237 (3d Cir. 2001)). Undoubtedly, this resale-price-maintenance suit involved risks related to establishing Defendants conspired to set a price floor for the sale of certain baby products, causing consumers to pay inflated prices for these baby products. This factor favors the Amended Settlement.

5. *The Risks of Establishing Damages*. As with the fourth *Girsh* factor, "this inquiry attempts to measure the expected value of litigating the action rather than settling it at the current time." *Sullivan*, 667 F.3d at 322 (citing *Cendant*, 264 F.3d at 238-39). Like *Sullivan*, the expert reports submitted by the parties here indicated that these proceedings would likely entail a "battle of the experts," with each side presenting its figures and defenses to the other side's proposals. 667 F.3d at 322. This factor favors the Amended Settlement.

6. *The Risks of Maintaining the Class Action through Trial.* The sixth *Girsh* factor "measures the likelihood of obtaining and keeping a class certification if the action were to

proceed to trial" in light of the fact that "the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the class action." *Sullivan*, 667 F.3d at 322 (citing *Warfarin*, 391 F.3d at 537). Class certification is tenuous, as a "district court retains the authority to decertify or modify a class at any time during the litigation if it proves to be unmanageable." *Id*. Although the variety of issues implicated in the class actions did not prevent certification of the Subclasses and do not present an obstacle to certification of Settlement Subclasses, there could be risk that such Subclasses would create intractable management problems, particularly in light of the single Manufacturer trials, and therefore be decertified. *Id*. This factor may or may not favor the Amended Settlement.

7. *Ability of Defendants to Withstand a Greater Judgment.* The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the settlement." *Sullivan*, 667 F.3d at 323 (citing *Warfarin*, 391 F.3d at 537-58). "In comparing the value of settlement versus trial, we must be careful to judge the fairness factors 'against the realistic, rather than theoretical, potential for recovery after trial.'" *Id*. (referencing *In re Global Crossing Sec. & ERISA Litig*., 225 F.R.D. 436, 461 (S.D.N.Y. 2004)). Here, this factor depends on the Defendant. This factor may not be an issue for BRU, but the opposite may be true for smaller Manufacturer Defendants.[8] A finding that an immediate settlement is preferable to the high unlikelihood of collecting a theoretical judgment against certain smaller Manufacturer Defendants appears entirely reasonable. This factor favors the Amended Settlement.

8-9. *The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation*. The final two *Girsh* factors consider "whether

[8] Maclaren, one such Defendant, has actually entered into bankruptcy since the Initial Settlement.

the settlement represents a good value for a weak case or a poor value for a strong case." *Sullivan*, 667 F.3d at 323-24 (citing *Warfarin*, 391 F.3d at 538). A determination of the reasonableness of a proposed settlement turns on "the present value of the damages plaintiffs would likely recover if successful [at trial], appropriately discounted for the risk of not prevailing … with the amount of the proposed settlement." *Prudential*, 148 F.3d at 322. The Third Circuit further noted that the court must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *Sullivan*, 667 F.3d at 323-24 (citing *GM Truck*, 55 F.3d at 806). Applying this framework, the Amended Settlement provides reasonable monetary relief and substantially fulfills the purposes and objectives of these class actions. Plaintiffs have obtained a $35.5 million recovery. The Amended Settlement ensures that 100% of the Net Settlement Fund will be distributed to Settlement Class Members. Thus, taking into account the risks of continued litigation, and the fact that the Amended Settlement was reached after intensive arm's-length negotiations conducted by experienced counsel, these final factors favor approval.

In addition, the *Prudential* considerations include: "the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether

any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable." 148 F.3d at 323. *See also Sullivan*, 667 F.3d at 319-26. Similar to the discussion of the *Girsh* factors above and the Amended Settlement providing for opt-outs (Section VIII, ¶ 31) and fair processing of claims (Section VI, ¶¶ 18-21), the *Prudential* considerations also favor approval of the Amended Settlement.

Courts "have separately observed that "'an initial presumption of fairness' may apply when reviewing a proposed settlement where: (1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected."[9] *Sullivan*, 667 F.3d at 320 (citing *Warfarin*, 391 F.3d at 535). *See also In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003). After consideration of those factors, if this Court concludes that the Amended Settlement should be preliminarily approved, "an initial presumption of fairness" is established. *In re Linerboard*, 292 F. Supp. 2d at 638 (citing *In re Gen. Motors Corp.*, 55 F.3d at 785). *See also* 4 Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS § 11:41 (4th ed. 2002) (noting that courts usually adopt "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval."). Here, similar to *Girsh* and *Prudential*, application of these factors further demonstrates that the Amended Settlement should be preliminarily approved.

Moreover, "the degree of direct benefit provided to the class" is significant. Under the Amended Settlement, all Class Members identified by BRU will now receive payment without

[9] The last factor is actually more aptly applied at final approval, after the time for class members to object has expired.

having to file a claim. Based on the combination of claims and direct payments, 100% of the Net Settlement Fund will be distributed to the Class. And there is no longer to be payment to *cy pres*. Instead, any uncashed, unclaimed amounts will be redistributed in the form of fully transferrable Coupons to certain Class Members who already received payment in an amount less than the Maximum Enhanced Authorized Payment.

In sum, the proposed Amended Settlement is a fair, reasonable and adequate compromise of the issues in dispute and should be preliminarily approved.

V. THE PROPOSED AMENDED SETTLEMENT SUBCLASSES SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

A. The Proposed Amended Settlement Subclasses Should be Certified for Settlement Purposes

This Court has already reviewed and certified the *McDonough* classes under Rule 23(a) and (b)(3). Now, Plaintiffs request that the Court approve the following:

(1) maintain class certification of and preliminarily approve the Amended Settlement with respect to the BabyBjörn Settlement Subclass (*see McDonough*, 638 F. Supp. 2d at 492; Amended Settlement, ¶ 1(s)(i));

(2) extend the end date of the *McDonough* Subclasses, for purposes of Amended Settlement Only to January 31, 2011, and preliminarily approve the Amended Settlement with respect to the Britax Settlement Subclass, Maclaren Settlement Subclass, Medela Settlement Subclass, and Peg Perego Stroller Settlement Subclass (*see McDonough*, 638 F. Supp. 2d at 492; Amended Settlement, ¶¶ 1(s)(ii)-(v));

(3) grant conditional class certification, for purposes of Amended Settlement only, and preliminarily approve the Amended Settlement with respect to the Peg Perego High Chair Settlement Subclass, the Peg Perego Car Seat Settlement Subclass and Kids Line Settlement Subclass. (Amended Settlement, ¶¶ 1(k)(ii), (vi)-(vii)).

First, with respect to the BabyBjörn Settlement Subclass, this Court has already conducted the analysis with respect to Rule 23. *See generally McDonough*, 638 F. Supp. 2d at 492.

Second, with respect to the Britax Settlement Subclass, Maclaren Settlement Subclass, Medela Settlement Subclass, and Peg Perego Stroller Settlement Subclass, this Court has already certified the classes through January 19, 2006. *Id*. During the settlement negotiations, the parties negotiated consideration and a release for these Subclasses to January 31, 2011. Because this Court has already conducted a Rule 23 analysis, these Settlement Subclasses should be conditionally certified.

Third, this Court previously considered whether the Peg Perego High Chair Settlement Subclass, Peg Perego Car Seat Settlement Subclass and Kids Line Settlement Subclass could be certified pursuant to Rule 23. The sole reason for this Court's dismissal of the claim against Kids Line at the time of class certification was a lack of standing for the proposed class representatives. *McDonough*, 638 F. Supp. 2d at 491. Plaintiffs have rectified this problem with the filing of *Elliott*, in which Plaintiffs Beth Hellman and Kelly Pollock have standing to allege and do allege claims against Kids Line.

This Court previously declined to certify an all-encompassing class comprised of Peg Perego high chairs, car seats and strollers. *McDonough*, 638 F. Supp. 2d at 474. The Court noted that each of these products would be in a different market and could encompass different evidence as to conspiracy. *Id*. Accordingly, the Court certified a class comprised only of Peg Perego stroller purchasers. *Id*. Plaintiffs have rectified this issue in *Elliott* by alleging separate claims on behalf of separate Subclasses for high chair purchasers and car seat purchasers. Moreover, as this Court previously noted Plaintiff Sarah Otazo purchased a Peg Perego high

chair. *Id*. She thus has standing to represent the Peg Perego High Chair Subclass. Additionally, *McDonough* Plaintiffs Lawrence McNally and Stephanie Bozzo purchased Peg Perego car seats, and thus can represent the Peg Perego Car Seat Subclass. Accordingly, for the same reasons as set forth in the *McDonough* Rule 23 proceedings, Plaintiffs seek conditional certification of the Peg Perego High Chair Settlement Subclass, Peg Perego Car Seat Settlement Subclass and Kids Line Settlement Subclass.

The practical purpose of conditional class certification is to facilitate dissemination of notice to the class of the terms of the proposed Amended Settlement and the date and time of the final-approval hearing. *See* MANUAL FOR COMPLEX LITIGATION § 21.633 (4th ed. 2004).

B. The Court should approve the Proposed Form and Method of Class Notice

1. The Proposed Form Of Class Notice adequately informs Class Members of their rights in this litigation.

The notice program meets the requirements of FED. R. CIV. P. 23(c)(2) (the best notice practicable under the circumstances should include individual notice to all members who can be identified through reasonable effort). Here, the parties propose a notice program for the proposed Amended Settlement that includes Postcard Notice, E-Mail Notice, Publication Notice, Long-Form Notice and a Claim Form, as set forth by expert Lael D. Dowd. *See generally* Dowd Decl., Ex. 2. The notice program is extensive and expected to reach at least 77 percent of the Class Members. *Id*. at ¶ 18. *See also* Section III.B, *supra.*

The notice program informs Settlement Subclass Members of the material terms of the Amended Settlement; the relief the proposed Amended Settlement will provide; the date, time and place of the final-approval hearing; the procedures and deadlines for opting out of the settlement or submitting comments or objections; and that, if they do not opt out, they will be bound by any final judgment in this case, including a release of claims. The proposed notice also

advises Settlement Subclass Members that Plaintiffs' counsel have pursued the lawsuit on a contingent basis and have not received any payment of fees or any reimbursement of their out-of-pocket expenses. The proposed notice further advises Class Members that Plaintiffs' counsel will apply to the Court for an award of fees and expenses. *Id.* Lastly, the proposed notice informs Settlement Subclass Members that Plaintiffs' counsel will seek incentive awards of up to $2,500 for each of the Settlement Subclass Representatives. *Id.*

Thus, the notice is accurate and informs Settlement Subclass Members of the material terms of the Amended Settlement and their rights pertaining to it. The Court should therefore approve the proposed forms of notice, and direct that they be disseminated as proposed by the parties.

VI. PROPOSED SCHEDULE OF EVENTS

The next steps in the settlement approval process are to notify the Settlement Subclasses of the proposed Amended Settlement, allow Class Members an opportunity to file any objections, and hold a final approval hearing. Toward those ends, the parties propose the following schedule, which is incorporated in the accompanying proposed order:

- Class notice must be completed by August 15, 2014;
- Papers in support of final approval of the settlement and any application for incentive awards, attorneys' fees, and expenses due August 15, 2014;
- Comments in support of, or in objection to, the settlement and/or fee application due August 22, 2014;
- Responses to any objections to the settlement due August 29, 2014;
- Requests for exclusion must be postmarked by or received by Claims Administrator by August 22, 2014;
- Withdrawals of requests for exclusion from the Settlement Subclasses must be postmarked by or received by Claims Administrator by August 22, 2014;

- All claims must be postmarked by or received by Claims Administrator by August 22, 2014;

- Fairness Hearing scheduled for any day on or after September 22, 2014 at the Court's convenience.

VII. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court:

(a) preliminarily approve the parties' proposed Fourth Amended Settlement Agreement:

(b) conditionally certify the following Rule 23(b)(3) Settlement Subclasses for settlement purposes only:

- "All persons who directly purchased any BabyBjörn baby carrier from Babies 'R' Us within the U.S. for the period February 2, 2000, to April 30, 2005. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("BabyBjörn Settlement Subclass");

- "All persons who directly purchased any Britax car seat from Babies 'R' Us within the U.S. for the period January 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Britax Settlement Subclass");

- "All persons who directly purchased any Maclaren stroller from Babies 'R' Us within the U.S. for the period October 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Maclaren Settlement Subclass");

- "All persons who directly purchased any Medela Pump In Style breast pump from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Medela Settlement Subclass");

- "All persons who directly purchased any Peg Perego stroller from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego Stroller Settlement Subclass");

- "All persons who directly purchased any Peg Perego high chair from Babies 'R' Us within the U.S. for the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego High Chair Settlement Subclass");

- "All persons who directly purchased any Peg Perego car seat from Babies 'R' Us within the U.S. during the period July 1, 1999, to January 31, 2011. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Peg Perego Car Seat Settlement Subclass"); and

- "All persons who directly purchased any Kids Line Product from Babies 'R' Us within the U.S. for the period January 1, 1999, to December 31, 2006. Excluded from this Settlement Subclass are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs" ("Kids Line Settlement Subclass").

(c) appoint The Garden City Group, Inc. as the class action administrator;

(d) order notice of the proposed Amended Settlement to Settlement Subclass Members; and

(e) enter the schedule set forth above, or another schedule at the convenience of the Court, for final approval proceedings.

Dated: May 13, 2014

Respectfully submitted,

s/ Eugene A. Spector

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