

**IN THE UNITED STATES DISTRICT COURT
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

**PLAINTIFFS’ MOTION FOR ENTRY OF
PROPOSED ALLOCATION ORDER**

On May 14, 2014, this Court granted Plaintiffs’ Motion for Preliminary Approval of the Fourth Amended Settlement Agreement, for Certification of Settlement Classes and for Permission to Disseminate Class Notice (“Motion for Preliminary Approval”), preliminarily approving Plaintiffs’ Amended Settlement¹ 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”), Maclaren USA, Inc. (“Maclaren”), Medela, Inc. (“Medela”) and Peg Perego U.S.A., Inc. (“Peg Perego”) (collectively, “Settling Defendants”). Attached as Exhibit F to the Settlement Agreement was a Proposed Allocation Order addressing the distribution of the Settlement Funds amongst the

¹ All capitalized terms in this Motion shall have the same meaning as defined in the Fourth Amended Settlement Agreement (“Amended Settlement”).

Settlement Classes. Plaintiffs hereby move for entry of that Proposed Allocation Order. In support of this filing, the Plaintiffs state as follows:

1. On May 13, 2014, Plaintiffs filed their Motion for Preliminary Approval of the Amended Settlement with this Court.
2. On May 14, 2014, this Court granted Plaintiffs' motion, preliminarily approving the Amended Settlement, certifying the Settlement Subclasses, and ordering the dissemination of Notice.
3. In preparation for seeking approval of the allocation of the Settlement Amount among the Classes, Plaintiffs engaged Dr. Martin Asher to calculate estimates of the appropriate allocation percentage for each Settlement Class. *See* Declaration of Dr. Martin Asher, attached to Plaintiffs' Motion for Final Approval as Exhibit 3.
4. Dr. Asher's calculations resulted in allocation percentages in line with those proposed in Plaintiffs' Proposed Allocation Order. *Id.* at ¶ 15.

THEREFORE, Plaintiffs respectfully request that this Court GRANT Plaintiffs' Motion for Entry of Proposed Allocation Order, and ENTER the Proposed Allocation Order.

Dated: August 15, 2014

Respectfully submitted,

s/ Elizabeth A. Fegan

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**CLASS COUNSEL FOR THE
SETTLEMENT SUBCLASSES**

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on August 15, 2014 a true and correct copy of the foregoing document was filed electronically by CM/ECF, which caused notice to be sent to all counsel of record.

By: /s/ Elizabeth A. Fegan
Elizabeth A. Fegan

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

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|---|-----------------------------|
| <p>CAROL M. MCDONOUGH, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>TOYS “R” US, INC., d/b/a Babies “R” Us, <i>et al.</i>,</p> <p>Defendants.</p> | <p>No. 2:06-cv-0242-AB</p> |
| <p>ARIEL ELLIOTT, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>TOYS “R” US, INC., d/b/a Babies “R” Us, <i>et al.</i>,</p> <p>Defendants.</p> | <p>No. 2:09-cv-06151-AB</p> |

[PROPOSED] ALLOCATION ORDER

WHEREAS, the Court granted final approval to the Fourth Amended Settlement Agreement (the “Agreement”) dated May 13, 2014 among the parties to these actions;

WHEREAS, the Court certified the following Settlement Subclasses:

- (a) All persons who directly purchased any BabyBjörn baby carrier distributed by Regal Lager from Babies “R” Us within the U.S. during 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”).
- (b) All persons who directly purchased any Britax car seat from Babies “R” Us within the U.S. during 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”).

- (c) All persons who directly purchased any Kids Line product from Babies “R” Us within the U.S. during 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”).
- (d) All persons who directly purchased any Maclaren stroller from Babies “R” Us within the U.S. during 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”).
- (e) All persons who directly purchased any Medela Pump In Style breast pump 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 (“Medela Settlement Subclass”).
- (f) All persons who directly purchased any Peg Perego stroller 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 Stroller Settlement Subclass”).

- (g) All persons who directly purchased any Peg Perego high chair 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 High Chair Settlement Subclass”).
- (h) 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”).

WHEREAS, the Settlement is Final and the Settlement Fund must now be allocated among the Settlement Classes for distribution to the Settlement Class Members;

WHEREAS, as part of the motion for final approval, Plaintiffs requested that the Court enter the Allocation Order;

After consideration of all the submissions in connection with this matter,

IT IS HEREBY ORDERED THAT:

1. The proposed allocation of the Settlement Fund among the Settlement Classes is adjudged to be fair, reasonable, and adequate and in the best interests of Plaintiffs and the Settlement Classes as a whole, as well as each Settlement Class individually and the Settlement Class Members, and satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2) and 23(e) and due process.

2. The Court finds that the Notice and the Notice Plan with respect to this Allocation Order constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.

3. The Court directs the Settlement Trustees and/or the Claims Administrator to allocate the Net Settlement Fund, after payment of all required expenses under the Settlement Agreement as well as any payments due from the Fee and Expense Order and subject to the provisions below, to the Settlement Classes, defined as the members of the Settlement Subclasses who do not timely and validly exclude themselves from the Settlement in accordance with the requirements set forth in the Notice or as otherwise approved by the Court, as follows:

| <u>Settlement Classes</u> | <u>Percentage Allocation from the Settlement Fund</u> |
|---|--|
| Britax Settlement Class | 28 % |
| Medela Settlement Class | 22% |
| Peg Perego Car Seats Settlement Class | 3% |
| Peg Perego High Chairs Settlement Class | 4% |
| Peg Perego Strollers Settlement Class | 9% |
| BabyBjörn Settlement Class | 6% |
| Maclaren Settlement Class | 7% |
| Kids Line Settlement Class | 21% |

The allocation to each of the Settlement Classes from the Net Settlement Fund is referred to as the “Percentage Allocation from the Settlement Fund.” The dollar amount within each of the funds for the individual Settlement Classes (“Individual Settlement Fund”) is referred to as the “Settlement Class Amount.”

4. The Claims Administrator is directed to make payments from each Individual Settlement Fund to Authorized Claimants as follows.

5. Class Counsel shall submit to the Claims Administrator a list comprised of each Settlement Product together with its estimated retail price for each year (the “ERP”). The ERP shall be calculated from pricing information obtained from the defendants and public sources.

6. Payments to Authorized Claimants.

- a. Each Authorized Claimant who either files or previously filed a valid Claim Form and who submits or previously 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 twenty percent (20%) of his or her actual purchase price of each Settlement Product, subject to the pro rata reductions or enhancements.
- b. Each Authorized Claimant (i) who files or previously filed a valid Claim Form and who submits or previously submitted documents that the Claims Administrator determines are valid proof of purchase but does not provide 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 ERP of each Settlement Product, subject to the pro rata reductions or enhancements. The amounts computed for any Authorized Claimant as set forth in these sub-paragraphs 6(a) or 6(b) shall be referred to as “Initial Authorized Payments.”
- c. Examples of the types of documents that may constitute valid documentary proof of purchase include, but are not limited to: receipts, cancelled checks, credit card statements, photographs, or corroborating, sworn affidavits from two other people. It will be within the discretion of the Claims Administrator to determine what constitutes valid documentary proof of purchase.

7. If payment of the total of the Initial Authorized Payments for a particular Settlement Class would not exhaust the Individual Settlement Fund from which they are to be made, then all of the Initial Authorized Payments for that Settlement Class shall be increased by an equal percentage until the Individual Settlement Fund would be exhausted or until each Authorized Claimant eligible for an Initial Authorized Payment would receive a maximum of three times his/her Initial Authorized Payments (“Enhanced Authorized Payments”). When each

of the Authorized Claimants eligible for Initial Authorized Payments in a Settlement Class is allocated the maximum Enhanced Authorized Payment, the Settlement Class shall be deemed fully satisfied. Any Settlement Class Amounts above the amounts necessary to pay the maximum Enhanced Authorized Payment for a Settlement Class are “Excess Amounts.”

8. If payment of the total of the Initial Authorized Payments for a particular Settlement Class would exceed the Individual Settlement Fund from which they are to be made, then the Individual Settlement Fund shall be referred to as an “Exhausted Settlement Fund.”

9. If there are no Excess Amounts after the calculations above, then all Authorized Claimants shall be paid solely from the respective Settlement Classes' Individual Settlement Funds and the Initial Authorized Payments in any Exhausted Settlement Fund shall be reduced pro rata (“Pro Rata Authorized Payments”).

10. If there are Excess Amounts and Exhausted Settlement Funds, the Excess Amounts shall be aggregated together and then reallocated to the Exhausted Settlement Funds in accordance with the Percentage Allocation from the Settlement Fund up to the amount necessary that would provide sufficient amounts in the Exhausted Settlement Fund to pay the Initial Authorized Payment to each Authorized Claimant. As long as there remain Excess Amounts and Exhausted Settlement Funds, this procedure shall be repeated.

11. If there remain Excess Amounts after implementation of paragraph 10, the remaining Excess Amounts shall be reallocated to the Settlement Classes whose members that are eligible for Initial Authorized Payments have not been allocated the maximum Enhanced Authorized Payment. The reallocation shall be calculated in a manner designed to equalize the percentage by which the aggregate of the Enhanced Authorized Payments for each such Settlement Class exceeds the aggregate of the Initial Authorized Payments for that respective

Settlement Class, but in no instance shall funds allocated pursuant to paragraph 3 be taken from any Individual Settlement Fund whose members have not been allocated the maximum Enhanced Authorized Payment.

12. Within 45 days of the Claims Deadline, the Claims Administrator shall identify and submit to Class Counsel an accounting of Initial Authorized Payments, Enhanced Authorized Payments and all Pro Rata Authorized Payments the Claims Administrator intends to pay. At the same time, the Claims Administrator will provide Defendants with sufficient information to (i) identify, for each Individual Settlement Fund, the aggregate of all amounts the Claims Administrator intends to pay to Authorized Claimants, and (ii) explain, for each Individual Settlement Fund, the calculation as provided for in this Allocation Order. Within 14 days of such notice, Class Counsel shall identify any issues or communicate their agreement with the payments proposed to be made by the Class Administrator. If Class Counsel and the Claims Administrator are unable to agree on the appropriate payments to be made or the resolution of any outstanding issues, they shall request an Order from the Court resolving any such issues. No payments shall be made until so ordered by the Court (the "Initial Distribution"). Payments shall be made by checks valid for 90 days (the "Payment Period").

13. If after the Payment Period there are any funds remaining in the Net Settlement Fund or any Individual Settlement Fund or in the Excess Amount or any other funds to which the Settlement Fund was allocated or distributed after all payments ordered by the Court have been made ("Final Remaining Amount"), the Claims Administrator is directed to pay such Final Remaining Amount to Defendants as Defendants shall jointly instruct the Settlement Trustee and/or Claims Administrator.

14. Upon payment of the Final Remaining Amount to Defendants, coupons, in the form described in Exhibit I of the Agreement in a total cumulative amount up to the Final Remaining Amount (“Coupons”) shall be distributed by the Claims Administrator to Authorized Claimants who (i) cashed or deposited the checks distributed to them in the Initial Distribution; (ii) have provided, or the Claims Administrator already has, their email addresses; and (iii) did not receive the Maximum Enhanced Authorized Payment (“Eligible Coupon Recipients”) as follows.

15. The total value of Coupons available shall be allocated to the Settlement Classes that contain Eligible Coupon Recipients based on a pro rata distribution consistent with the Percentage Allocations reflected in paragraph 3 above. The value of each Coupon shall be calculated in the same manner as the Initial Authorized Payments, Enhanced Authorized Payments, and Pro Rata Authorized Payments as described in *supra* in Paragraphs 6-11. Each Coupon will be issued only in whole dollar amounts and this rounding process shall be implemented in such a way that it shall neither increase nor decrease the total dollar amount distributed. Once distributed, the Coupons are fully transferrable.

16. Within 45 days of the calculation of the Final Remaining Amount, the Claims Administrator shall identify and submit to Class Counsel an accounting of the Coupons to be distributed. At the same time, the Claims Administrator will provide Defendants with sufficient information to (i) identify, for each Individual Settlement Fund, the aggregate of all Coupon amounts to be distributed, and (ii) explain, for each Individual Settlement Fund, the calculation as provided for in this Allocation Order. Within 14 days of such notice, Class Counsel shall identify any issues or communicate their agreement with the payments proposed to be made by the Class Administrator. If Class Counsel and the Claims Administrator are unable to agree

upon the appropriate Coupon distribution to be made or the resolution of any outstanding issues, they shall request an Order from the Court resolving any such issues. Coupons shall not be distributed until so ordered by the Court. Coupons shall be valid for 120 days.

17. This Order shall finally resolve the claims, rights and liabilities of the parties related to the allocation of the Settlement Fund. There is no just reason for delay, and this Order shall be considered final and immediately appealable pursuant to Federal Rule of Civil Procedure 54(b).

SO ORDERED.

Dated: _____, 2014

Judge Anita Brody