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18 SUPERIOR COURT OF CALIFORNIA
19 FOR THE COUNTY OF ALAMEDA

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21 **PEOPLE OF THE STATE OF**
CALIFORNIA, ex rel. EDMUND G.
BROWN JR., Attorney General,, et al.

22 Plaintiffs,

23 v.

24 **MATTEL, INC., et al.**

25 Defendants.

Case No. RG07356892
ASSIGNED FOR ALL PRETRIAL PURPOSES
TO: JUDGE STEVEN A. BRICK
DEPARTMENT 17

STIPULATED [PROPOSED] CONSENT
JUDGMENT AS TO MATTEL, INC. AND
FISHER-PRICE, INC.

Complaint filed: November 19, 2007
Trial date: None

1 This Stipulated Consent Judgment (the "Consent Judgment") is between Plaintiffs, the
2 People of the State of California, *ex rel.* Edmund G. Brown Jr., California Attorney General
3 "Attorney General") and the Los Angeles City Attorney (collectively, "People"), and
4 Defendants, Mattel, Inc. and Fisher-Price, Inc. (collectively, "Mattel").

5 Whereas, Mattel identified in 2007 that portions of some toys made by or for Mattel
6 contained lead in excess of applicable U.S. federal and/or state standards and voluntarily recalled
7 and/or acted affirmatively to encourage consumers to return the Recalled Toys;¹

8 Whereas, Mattel voluntarily and forthrightly identified the need to recall or withdraw the
9 Recalled Toys, has sought to promote toy safety generally, and has operated in good faith and in
10 the best interests of the consuming public;

11 Whereas, Mattel acted quickly and voluntarily to develop and adopt additional quality
12 control measures designed to minimize the risk that Covered Products would be sold in the
13 future with Impermissible Lead, and to further enhance toy safety;

14 Whereas, Mattel has cooperated fully with the People in their investigation and
15 settlement of this matter, in the interest of the consuming public;

16 **THEREFORE**, the Parties hereby stipulate as follows:

17 **1.0 INTRODUCTION**

18 1.1 On November 19, 2007, following the receipt of several sixty-day notices of
19 intent to file suit on behalf of the general public pursuant to Health and Safety Code
20 Section 25249.7(d), the People filed their complaint, captioned *People of the State of*
21 *California v. Mattel, Inc. et al.*, RG07356892 in the Alameda County Superior Court. The
22 People allege that the defendants violated the California Safe Drinking Water and Toxic
23 Enforcement Act, California Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"),
24 and Business & Professions Code Sections 17200 *et seq.* ("Unfair Competition Law"), by
25 exposing California consumers to lead through the manufacture, distribution and sale of toys
26 made of materials that contain lead or lead compounds, without first providing "clear and
27

28 ¹ The Recalled Toys are defined at subsection 2.14. (*See* Section 2.0 for other defined terms.)

1 reasonable” warnings. Lead and lead compounds are listed under Proposition 65 as “chemical[s]
2 known to the State of California to cause cancer and birth defects or other reproductive harm.”

3 1.2 For purposes of the Consent Judgment only, the Parties stipulate that (a) Mattel
4 employs more than 10 persons, and has employed ten or more persons at some time relevant to
5 the allegations of the Complaint, (b) the Court has jurisdiction over the allegations of violations
6 contained in the Complaint, (c) the Court has personal jurisdiction over Mattel for the purposes
7 of enforcing the terms of the Consent Judgment, (d) venue is proper in the County of Alameda,
8 and (d) the Court has jurisdiction to enter the Consent Judgment as a full settlement and
9 resolution of the allegations contained in the Complaint.

10 1.3 Mattel agrees not to challenge or object to entry of the Consent Judgment by the
11 Court unless the People have notified Mattel in writing that the People no longer support entry of
12 the Consent Judgment or that the People seek to modify or support modification of the Consent
13 Judgment, in which case Mattel may, at its option, withdraw from the Consent Judgment. Mattel
14 agrees not to challenge the Court’s jurisdiction to enforce the terms of the Consent Judgment
15 once it has been entered.

16 1.4 Mattel disputes the allegations of the Complaint, and contends that Mattel’s
17 conduct and all Mattel products sold in California have complied with and comply with all
18 applicable State laws, including Proposition 65 and the Unfair Competition Law. However, the
19 Parties enter into the Consent Judgment pursuant to a settlement of certain disputed claims
20 between the Parties as alleged in the Complaint, for the purpose of avoiding prolonged and costly
21 litigation, and to resolve all claims arising from the facts alleged in the Complaint. By execution
22 of the Consent Judgment, Mattel does not admit any fact, conclusion of law, or violation of law,
23 including, but not limited to, any violations of Proposition 65, the Unfair Competition Law or
24 any other statutory, regulatory, common law or equitable requirements. Neither the Consent
25 Judgment, nor the Parties’ compliance with the Consent Judgment, shall be construed as an
26 admission by Mattel of any fact, conclusion of law, issue of law or violation of law.

27 1.5 Except as explicitly set forth herein, nothing in the Consent Judgment shall
28 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or

1 any other pending or future legal and/or administrative proceedings; nor shall anything in the
2 Consent Judgment preclude the Parties from opposing any such defense, claim, or argument.

3 **2.0 DEFINITIONS**

4 2.1 For Children's Products manufactured before February 10, 2009, "Accessible"
5 shall mean a material that is physically exposed to a child at the time of purchase or that will
6 become physically exposed to a child through normal and reasonably foreseeable use and abuse
7 of the Covered Product as determined pursuant to ASTM F963-07, and only to the extent use and
8 abuse is specified by ASTM F 963-07.

9 2.2 For Children's Products manufactured on or after February 10, 2009,
10 "Accessible" shall have the same meaning as set forth in Section 2.1 above, provided that any
11 material that is not or does not become physically exposed to a child through normal and
12 reasonably foreseeable use and abuse of a children's product, as use and abuse is specified by
13 ASTM F963-07, solely by reason of paint, electroplating, or other surface coating, shall also be
14 deemed "Accessible." The Parties further agree that, in the event that the Consumer Product
15 Safety Commission ("CPSC") by final rule, guidance rule, exclusion, or exception pursuant to
16 Section 101(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") determines
17 that the Federal Lead Standards apply to any material that is not "Accessible" under the
18 definition in the immediately preceding sentences, then any such material shall also be deemed
19 "Accessible" under the Consent Judgment. The foregoing definition of "Accessible" was
20 adopted solely for purposes of the Consent Judgment and shall not affect the ability of the People
21 to argue in any other context that materials that are not "Accessible" under the Consent
22 Judgment nonetheless are or ought to be subject to the Federal Lead Standards.

23 2.3 "Children's Product" has the same meaning as that given in Section 3(a) of the
24 Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2052 (a) and is manufactured by Mattel or
25 for Mattel by a Vendor and is sold or offered for sale to consumers in California.

26 2.4 "Court" shall mean the Alameda County Superior Court.
27
28

1 2.5 “Covered Product” shall mean a finished Children’s Product that is manufactured
2 by Mattel or for Mattel by a Vendor on or after the Effective Date, and is sold or offered for sale
3 to consumers in California.

4 2.6 “Effective Date” shall mean November 30, 2008, provided that the Parties to this
5 agreement have executed it at or prior to that time.

6 2.7 “Federal Lead Standards” shall mean any standards set or promulgated, before or
7 after the Effective Date, by the CPSIA or by the Consumer Product Safety Commission (the
8 “CPSC”) relating to the maximum permissible levels of lead in Substrates and Surface Coatings,
9 including the products or components to which the standards apply and any exemptions from the
10 application of those standards.

11 2.8 “Government Disclosure Restrictions” shall mean all U.S. federal and foreign
12 government restrictions or requirements existing before or after the Effective Date, including but
13 not limited to CPSC reporting, disclosure and publication obligations, instructions or practices,
14 that prohibit or restrict the publication or disclosure or the timing of the publication or disclosure
15 of information by Mattel. Nothing in the Consent Judgment shall be construed as preventing
16 Mattel from arguing that Mattel is prohibited from disclosing information, and nothing in the
17 Consent Judgment shall be construed to restrict any power of the People or Mattel to seek,
18 through court or administrative process, any information from the other Party, subject to
19 whatever defenses that other Party may otherwise have.

20 2.9 “Impermissible Lead” shall mean lead in excess of the Lead Standards.

21 2.10 “Lead Standards” shall mean the standards contained in Section 3.1 of the
22 Consent Judgment that set the maximum permissible levels of lead in Substrates and Surface
23 Coatings used on or in an Accessible part of a finished Covered Product. For Children’s
24 Products that were manufactured before the Effective Date, and are therefore not Covered
25 Products, Lead Standards shall mean those Federal Lead Standards that were in effect at the time
26 of manufacture.

1 2.11 “Mattel” shall mean Mattel, Inc. and Fisher Price, Inc. and all of their United
2 States and foreign subsidiaries, predecessors, successors, parents, and assigns that manufacture,
3 distribute, market, donate, offer for sale, and/or sell Covered Products.

4 2.12 “Parties” shall mean Mattel and the People.

5 2.13 “Quality Assurance System” shall mean the totality of Mattel’s quality assurance
6 procedures, including but not limited to inspection, auditing and/or testing procedures, designed
7 as a system, even where individual tests or procedures may fail, to identify Impermissible Lead
8 and to prevent the sale of Covered Products with Impermissible Lead in California.

9 2.14 “Recalled Toys” shall mean those products made by or for Mattel that Mattel
10 withdrew from sale or recalled in the United States due to the potential presence of lead in excess
11 of applicable standards, on or after August 1, 2007, and prior to the Effective Date.

12 2.15 “Substrates” shall mean any Accessible materials used in finished Covered
13 Products that are not Surface Coatings.

14 2.16 “Surface Coatings” shall mean those Accessible paints and other similar surface
15 coating materials used on finished Children’s Products as defined and limited by 16 C.F.R.
16 § 1303.2(b)(1).

17 2.17 “Toy Testing and Outreach Fund” shall mean a fund established within the
18 California-based Public Health Institute and administered by the Public Health Trust, a project of
19 the Public Health Institute, for the purposes of monitoring compliance with limitations on lead in
20 children’s products in California, and identifying and implementing outreach measures with
21 respect to recalls of children’s products, including reasonable efforts to communicate
22 information about such recalls to consumers who do not have internet access and/or who do not
23 speak English.

24 2.18 “Vendor” shall mean a third party that manufactures for Mattel finished Covered
25 Products sold at wholesale by Mattel.

1 **3.0 COMPLIANCE PROVISION / PERMANENT INJUNCTIONS**

2 **3.1 COMPLIANCE WITH LEAD STANDARDS: COVERED PRODUCTS**

3 Mattel shall not manufacture, distribute, donate, offer for sale or sell in California,
4 Covered Products with a concentration of lead in or on Accessible parts in excess of the
5 following standards.

6 3.1.1 For each Accessible Surface Coating on a finished Covered Product,
7 90 parts per million (ppm) total lead for finished Covered Products manufactured after
8 the Effective Date.

9 3.1.2 For each Accessible Substrate in or on a finished product:

10 3.1.2.1 300 ppm total lead for finished Covered Products manufactured
11 after the Effective Date; and

12 3.1.2.2 100 ppm total lead for finished Covered Products manufactured
13 on or after August 14, 2011, unless the CPSC determines that a standard of
14 100 ppm total lead for finished Covered Products is not technologically feasible,
15 in which case Mattel shall be obligated to comply with the standard established by
16 the CPSC.

17 3.1.2.3 The Lead Standards shall not apply to electronic components
18 or electronic accessories that are not Accessible "small objects" as described in
19 ASTM F 963-07 § 4.6.1. Notwithstanding the foregoing sentence, if the CPSC
20 (i) issues requirements to eliminate or minimize the potential for exposure to and
21 accessibility of lead in electronic devices, (ii) establishes a schedule by which
22 such electronic devices shall be in full compliance with the limits described in this
23 subsection, and/or (iii) determines that full compliance will not be technologically
24 feasible, pursuant to Section 101(b)(4) of the CPSIA, and such requirements,
25 schedules or determinations are in effect, then the CPSC rules, exceptions or
26 exclusions pertaining to electronic components or electronic accessories shall be
27 considered Lead Standards under the Consent Judgment. In the event that CPSC
28 does not act pursuant to Section 101(b)(4) of the CPSIA before the third

1 anniversary of the Effective Date, the exception provided by the first sentence of
2 this subsection shall be deemed to expire at that time.

3 3.1.2.4 The Lead Standards shall not apply to any Children's Product
4 or constituent components or materials that the CPSC excludes pursuant to
5 Section 101(b) of the CPSIA from the application of Federal Lead Standards.

6 3.2 QUALITY ASSURANCE SYSTEM

7 3.2.1 Mattel shall implement a Quality Assurance System that is designed to
8 identify and to segregate Covered Products that contain Impermissible Lead during and
9 subsequent to the manufacturing process in order to prevent distributing, donating,
10 offering for sale or selling Covered Products containing Impermissible Lead in
11 California. Mattel's commitments under this Section 3.2, including with respect to its
12 Quality Assurance System and with respect to Vendors, shall apply only to Covered
13 Products manufactured by Mattel or for Mattel by Vendors. It is expressly understood
14 that individual tests or procedures may be modified, changed or revised by Mattel over
15 time and that no claim can or will be made that this Section of the Consent Judgment has
16 been violated: (i) absent a substantial failure to implement a Quality Assurance System,
17 or (ii) because a specific test or procedure is not followed or performed, as long as the
18 modified Quality Assurance System is designed to perform the same function as
19 described herein.

20 3.3 RECALLS

21 3.3.1 Mattel shall provide to the Attorney General the information it provides in
22 any written reports to the CPSC concerning any recall of Covered Products because of
23 lead content, as soon as possible, once any such recall is approved and announced by the
24 CPSC, as permitted by and consistent with Government Disclosure Restrictions, and any
25 and all follow-up reports, including information contained in its progress reports on the
26 efficacy of product recalls, subject to confidentiality as permitted by law.

27 3.3.2 Mattel shall provide direct notice of a recall because of lead content
28 involving Covered Products to all consumers of the affected Covered Product for whom

1 Mattel possesses address or e-mail information. The notice shall include, at a minimum,
2 information that is equivalent to the information in the recall notice approved by the
3 CPSC.

4 3.4 INTERIM MEASURES FOR CHILDREN'S PRODUCTS THAT ARE NOT
5 COVERED PRODUCTS

6 If the Attorney General or a member of Mattel's U.S. product integrity group obtains
7 reliable information that a Children's Product manufactured before the Effective Date by Mattel
8 or by a Vendor for Mattel that has been offered for sale by a Mattel-authorized retailer in
9 California after the Effective Date and prior to February 10, 2009 contains more than:

10 (A) 600 ppm lead: (i) in or on an Accessible Surface Coating, or (ii) in or on an Accessible
11 Substrate that is plastic, rubber or polyvinyl chloride ("PVC"), or (B) more than 90 ppm of
12 soluble lead in leachate from unplated metal components which are "small objects" and are

13 accessible to a child following assembly as tested and determined pursuant to EN-71, then upon
14 notice thereof, Mattel shall immediately investigate, and upon confirmation but in no event
15 longer than 10 business days, shall: (a) stop distributing the Children's Product(s) for sale in

16 California, (b) promptly notify customers selling in California of the potentially non-conforming
17 Children's Product(s), and (c) within three business days, inform the Attorney General of what
18 action or actions it has taken and will take to investigate and, if applicable, to prevent the

19 Children' Product from being sold by Mattel in California, including which customers it has
20 notified and/or will notify. The use of the word "obtains" in the preceding sentence shall not be
21 deemed to create or impose any affirmative duty or obligation to seek out any Children's

22 Products that are subject to this paragraph. This Section 3.4 does not apply to electronic
23 components or electronic accessories that are not Accessible "small objects" as described in
24 ASTM F 963-07 § 4.6.1. This Section 3.4 shall also not be applicable if, after meeting and

25 conferring, Mattel and the Attorney General agree that any lead exposure arising from a

26 Children's Product otherwise subject to this Section is less than 0.5 micrograms per day based on
27 an assessment conducted pursuant to Section 25821 of Proposition 65's regulations. In the event
28 Mattel undertakes a recall pursuant to CPSC regulations, it shall be deemed to satisfy Mattel's

1 obligations under this Section 3.4. The timing and content of any disclosures of information
2 required under this Section shall be subject to any Government Disclosure Restrictions.

3 **4.0 FUTURE ENFORCEMENT**

4 **4.1 GENERAL ENFORCEMENT FRAMEWORK**

5 Under the circumstances set forth herein, and after having provided Mattel with at least
6 fifteen (15) business days written notice during which the Parties will meet and confer, and, on
7 request, at least fifteen (15) additional business days in the event Mattel wishes to exercise
8 subsection 4.1.1, the People may enforce violations of the Consent Judgment or enforce
9 violations of applicable State law regarding the presence of lead or lead compounds in a
10 Children's Product by application to a court of competent jurisdiction for appropriate relief.

11 4.1.1 The People may elect to enforce a violation of applicable State law
12 regarding the presence of lead or lead compounds in a Children's Product, or the Lead
13 Standards in the Consent Judgment, but not both, in accordance with either Sections 4.1
14 or 4.2. However, if Mattel demonstrates to the satisfaction of the Attorney General,
15 which satisfaction shall not unreasonably be withheld, within thirty (30) days following
16 receipt of notice pursuant to Section 4.1 that any lead exposure arising from a Children's
17 Product is less than 0.5 micrograms per day based on an assessment conducted by a
18 qualified expert pursuant to Section 25821 of the Proposition 65 regulations, then the
19 Attorney General, if he elects to pursue enforcement of the alleged violation at issue,
20 shall do so pursuant to Section 4.2, below; provided that if the Attorney General obtains
21 the opinion of a qualified expert that refutes the assessment conducted by Mattel's expert,
22 which opinion the Attorney General shall make available to Mattel, the Attorney General
23 may proceed pursuant to Section 4.1.

24 4.1.2 Wherever the alleged violation asserted under Section 4.1 or 4.2 concerns
25 a violation of the Lead Standards, then the notice shall include information sufficient to
26 identify the Children's Product at issue, including, at a minimum, if available, its stock
27 keeping unit number and date code. Mattel shall be permitted to inspect the Children's
28 Product at issue upon request.

1 4.2 NOTICES OF VIOLATION AND ELECTION; STIPULATED PENALTIES

2 4.2.1 Notice of Violation: Within 60 days after the Attorney General learns
3 facts providing a reasonable basis to conclude that a Children’s Product that contains
4 Impermissible Lead was sold in California, the Attorney General shall provide Mattel
5 written notice of the alleged violation (“Notice of Violation”). If the Attorney General
6 has information about the alleged violation that is not public or that Mattel does not
7 already have in its possession, including test results, the Notice of Violation shall include
8 such information, except any evidence that has been submitted in support of a certificate
9 of merit pursuant to Health and Safety Code Section 25249.7(d) need not be provided. In
10 any event, the Attorney General shall make available to Mattel for inspection and
11 copying, upon its request, all information in the possession of the Attorney General
12 pertaining to the alleged violation that is not privileged or subject to confidentiality under
13 State law.

14 4.2.2 Notice of Election: Within 15 business days after Mattel receives the
15 Notice of Violation, and all materials in the possession of the Attorney General relevant
16 to the alleged violation as set forth in subsection 4.2.1, Mattel shall provide written notice
17 to the Attorney General whether it elects to contest the allegations contained in the Notice
18 of Violation (“Notice of Election”).

19 4.2.3 Contents of Notice of Election Not to Contest: If Mattel does not contest
20 the allegations in the Notice of Violation, then the Notice of Election shall include: (i) a
21 description of the Quality Assurance System that was in place to prevent the violation
22 from occurring and the corrective action that Mattel has undertaken or proposes to
23 undertake pursuant to subsection 4.2.5; (ii) the name and contact information of the
24 facility or facilities where the Children’s Product was manufactured; and (iii) an
25 explanation of why the violation occurred. Within 10 business days after sending the
26 Notice of Election, and if Mattel does not contest the violation, Mattel shall make the
27 payment required under subsection 4.2.7.
28

1 4.2.3.1 Mattel may also send the Attorney General a Notice of Election
2 under subsection 4.2.3 in response to a 60-day notice of violation pursuant to
3 Health and Safety Code Section 25249.7(d)(1) where the Attorney General has
4 not issued a Notice of Violation, provided that (a) Mattel waits at least 45 days
5 after receipt of the 60-day notice, (b) the Attorney General has not provided
6 notice of the same, or a substantially similar violation, under Section 4.1 or
7 Section 4.2.1, and (c) Mattel serves a copy of the Notice of Election on the person
8 that sent the 60-day notice .

9 4.2.4 Contents of Notice of Election to Contest: If Mattel contests the Notice of
10 Violation, then the Notice of Election shall include all then-available documentary
11 evidence in Mattel's possession regarding the alleged violation, including all test data, if
12 any, as permitted by and consistent with Government Disclosure Restrictions. Within
13 15 business days after serving a Notice of Election contesting a Notice of Violation,
14 Mattel and the Attorney General shall meet and confer in good faith to attempt to resolve
15 the dispute. At the conclusion of the meet and confer, one or more of the following may
16 take place: (i) the Attorney General may withdraw the Notice of Violation; (ii) Mattel
17 may issue an amended Notice of Election that does not contest the violations, pursuant to
18 subsections 4.2.2 and 4.2.3, above; or (iii) Mattel may continue to contest the Notice of
19 Violation.

20 4.2.5 Action Upon Election: Upon election by Mattel not to contest the Notice
21 of Violation, Mattel shall: (i) take corrective action designed to encourage the removal of
22 the Children's Product from sale in California; (ii) if there is no recall in conjunction with
23 the CPSC, inform consumers in California that they may return the affected products for
24 a full refund, replacement toy, repair and/or voucher for replacement toys, at Mattel's
25 option; and (iii) pay to the Attorney General within ten (10) business days the stipulated
26 payments specified in subsection 4.2.7. A Notice of Election that does not contest an
27 alleged violation of the Consent Judgment or of applicable State law shall be considered
28 an offer of compromise under California Evidence Code § 1152 and Federal Rule of

1 Evidence 408 and shall not otherwise constitute an admission of any fact or issue by
2 Mattel. Such Notice of Election shall also not be admissible in any proceeding for any
3 purpose other than a proceeding brought pursuant to Section 4 of the Consent Judgment.

4 4.2.6 Upon election by Mattel to contest the Notice of Violation, the People
5 may, by motion or order to show cause before the Superior Court of Alameda, seek to
6 enforce the terms and conditions contained in the Consent Judgment. In any such
7 proceeding, the People may seek whatever fines, costs, penalties, or remedies are
8 provided by law for failure to comply with the Consent Judgment and Mattel shall retain
9 the right to present all evidence, arguments, and defenses concerning compliance with the
10 Consent Judgment that it wishes to raise to the Court.

11 4.2.7 Payments for Non-Contested Matters: Unless Mattel contests a Notice of
12 Violation under subsection 4.2.4 and maintains that election following the process set
13 forth in subsection 4.2.4, then it shall tender payment as further specified in Section 5.2
14 below, the following stipulated payments: \$20,000 for the first occurrence, \$35,000 for
15 the second occurrence within six months, and \$50,000 for the third or subsequent
16 occurrence within a year. For purposes of this Section, an "Occurrence" shall refer to an
17 event with a duration of less than three weeks at a Mattel or Vendor facility that has
18 resulted in Impermissible Lead in finished Children's Products. Mattel's liability under
19 subsection 4.2.7 of the Consent Judgment for manufacturing, distributing, selling, or
20 offering for sale in California a Children's Product containing Impermissible Lead shall
21 be limited such that Mattel shall be liable for no more than one required payment for each
22 Occurrence that results in Children's Products containing Impermissible Lead being
23 distributed, sold, or offered for sale in California regardless of the number of retailers to
24 whom such Children's Products have been distributed.

25 4.2.8 After Mattel has served a Notice of Election on the Attorney General as
26 provided in this Consent Judgment, compliance by Mattel with subsection 4.2.5 and
27 payment by Mattel pursuant subsection 4.2.7 shall be a full, final and binding resolution
28

1 of the alleged violation at issue and shall render the alleged violation a Covered Claim
2 under and as defined in Section 6.

3 4.2.9 A Notice of Election that does not contest an alleged violation of
4 Section 3.1 shall be considered an offer of compromise under California Evidence Code
5 § 1152 and Federal Rule of Evidence 408, and shall not constitute an admission of any
6 fact or issue by Mattel. Such Notice of Election shall not be admissible in any
7 proceeding for any purpose other than a proceeding brought pursuant to Section 4.1 of
8 this Consent Judgment.

9 **4.3 RESERVATIONS REGARDING FUTURE ENFORCEMENT**

10 Nothing in the Consent Judgment shall restrict the Attorney General from exercising his
11 enforcement authority under the CPSIA with respect to future violations of Federal Lead
12 Standards. In addition, except as provided in Sections 4.1 and 4.2, nothing in the Consent
13 Judgment waives an authorized public prosecutor's right to take future enforcement action
14 regarding any violations of applicable State law regarding the presence of lead and lead
15 compounds in Covered Products not covered by the Complaint or addressed by Section 6 of the
16 Consent Judgment, and to seek in such actions whatever fines, costs, attorneys' fees, penalties or
17 remedies are provided by law. The rights of Mattel to defend itself and its actions in law or
18 equity shall not be abrogated or reduced in any fashion by the terms of this Section. Mattel shall
19 be entitled to raise any and all applicable defenses, arising in law or equity, except that Mattel
20 shall not contest its obligation to comply with the terms of the Consent Judgment as long as the
21 Consent Judgment remains in effect. Nothing in the Consent Judgment shall be construed as
22 diminishing Mattel's continuing obligation to comply with Proposition 65 or the UCL in its
23 future activities, to the extent these statutes are applicable.

24 **5.0 PAYMENTS**

25 5.1 Settlement Payment. The total settlement amount shall be \$1,000,000. Mattel
26 shall pay \$100,000 on or before December 5, 2008. Mattel shall pay the remaining \$900,000
27 within ten business days of the date of entry of judgment, or by January 15, 2009, whichever is
28 later. The payment shall be allocated as follows:

1 5.1.1 \$300,000 as a civil penalty pursuant to California Health & Safety Code
2 section § 25249.7, subdivision (b)(1). The 25 percent portion of the civil penalty
3 allocated pursuant to Health and Safety Code section 25249.12, subdivision (d), shall be
4 divided as follows: \$50,000 to the Attorney General, and \$25,000 to the Los Angeles
5 City Attorney's Office.

6 5.1.2 \$300,000 to the Public Health Institute, including the entirety of the
7 \$100,000 payment made on or before December 5, 2008. These funds, and any interest
8 on the funds, shall be placed in the Toy Testing and Outreach Fund, and administered by
9 the Public Health Trust in a manner consistent with Section 2.17 of this Consent
10 Judgment

11 5.1.3 \$150,000 to the Attorney General to be used for the enforcement of
12 Proposition 65.

13 5.1.4 \$100,000 to the Los Angeles City Attorney to be used for the enforcement
14 of Proposition 65.

15 5.1.5 \$150,000 to reimburse the Attorney General's attorney's fees and costs
16 incurred in investigating, bringing, and resolving the case against Mattel.

17 5.2 Stipulated Payments. Any Stipulated payments pursuant to subsections 4.2.5 and
18 4.2.7 shall be paid within ten (10) business days after Mattel's election not to contest the Notice
19 of Violations, and shall be allocated as follows:

20 5.2.1 25 percent shall be a civil penalty, pursuant to Health and Safety Code
21 Section 25249.7, subdivision (b)(1).

22 5.2.2 75 percent shall be placed in the Toy Testing and Outreach Fund.

23 5.3 Payments to the Attorney General shall be made by check payable to "Office of
24 the California Attorney General," and sent by certified or express mail to:

25 Robert Thomas
26 Legal Analyst
27 Office of the Attorney General
28 1515 Clay St., 20th Floor
 Post Office Box 70559
 Oakland, California 94612

1 5.4 Payments to the Los Angeles City Attorney shall be made by check payable to the
2 Los Angeles City Attorney, and shall be sent to:

3 Patricia Bilgin
4 Supervising Attorney, Environmental Justice Unit
5 200 North Main Street, 500 City Hall East
6 Los Angeles, CA 90012

7 5.5 Funds paid to the Attorney General pursuant to subsections 5.1.3 or 5.1.5 shall be
8 placed in an interest-bearing Special Deposit Fund established by the Attorney General. Those
9 funds, including any interest derived therefrom, shall be used by the Attorney General, until all
10 funds are exhausted, for the costs and expenses associated with the enforcement and
11 implementation of Proposition 65, including investigations, enforcement actions, other litigation
12 or activities as determined by the Attorney General to be reasonably necessary to carry out his
13 duties and authority under Proposition 65. Such funding may be used for the costs of the
14 Attorney General's investigation, filing fees and other court costs, payment to expert witnesses
15 and technical consultants, purchase of equipment, travel, purchase of written materials,
16 laboratory testing, sample collection or any other cost associated with the Attorney General's
17 duties or authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to
18 this Section, and any interest derived therefrom, shall solely and exclusively augment the budget
19 of the Attorney General's Office and in no manner shall supplant or cause any reduction of any
20 portion of the Attorney General's budget.

21 **6.0 COVERED CLAIMS**

22 The Consent Judgment is a full, final, and binding resolution between the People and
23 Mattel and Mattel's parents, shareholders, divisions, subdivisions, subsidiaries, affiliates,
24 partners, sister companies, employees, shareholders, directors, insurers, and attorneys and their
25 successors and assigns ("Defendant Releasees"), and all entities to whom they have distributed
26 or sold Children's Products manufactured by or for Mattel, including but not limited to
27 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
28 ("Downstream Defendant Releasees"), of any violation of Proposition 65, the UCL, CPSA,
FHSA, or any other statutory or common law claims that have been or could have been asserted

1 in the public interest or by or on behalf of the people of the State of California against Mattel,
2 Defendant Releasees, and Downstream Defendant Releasees, regarding the presence of lead and
3 lead compounds in Children's Products manufactured by or for Mattel prior to the Effective
4 Date, or the failure to warn about exposure to, lead or lead compounds, in Children's Products
5 manufactured by or for Mattel prior to the Effective Date ("Covered Claim"). Compliance with
6 the Lead Standards in the Consent Judgment by Mattel after the Effective Date constitutes
7 compliance with Proposition 65 and the UCL by Mattel, Defendant Releasees, and Downstream
8 Defendant Releasees regarding the presence of lead and lead compounds in Covered Products
9 manufactured by or for Mattel, and the failure to warn about exposure to, lead or lead
10 compounds, in Covered Products manufactured by or for Mattel. This Consent Judgment does
11 not create or give rise to any private right of action of any kind.

12 **7.0 PRESERVATION OF INDUSTRY COMPETITIVENESS.**

13 In the event the People enter into an agreement or consent judgment with any other
14 person manufacturing Children's Products addressing alleged violations of Proposition 65 or the
15 UCL with respect to lead and Children's Products that provides for less stringent standards than
16 the Lead Standards set forth in Section 3.1, above, eliminating or curtailing the Quality
17 Assurance System related-requirements set forth in Section 3.2, eliminating or changing the
18 criteria governing the Interim Measures requirements set forth in Section 3.4, or providing for a
19 lower level of stipulated payments than those set forth in subsection 4.2.7, then the Consent
20 Judgment shall be deemed to have been amended to provide Mattel with the option of exercising
21 those provisions rather than those specified herein. Mattel shall provide the Attorney General
22 with prior written notice of any election made pursuant to this Section.

23 **8.0 GOVERNMENT DISCLOSURE RESTRICTIONS**

24 8.1 Mattel shall immediately notify the Attorney General if, due to a Government
25 Disclosure Restriction, Mattel is unable to publish or disclose any information otherwise
26 required under the Consent Judgment, and at that time Mattel shall specify the Government,
27 Government Entity, and/or Government Disclosure Restriction(s) that Mattel believes prevents
28 the disclosure.

1 **9.0 REPRESENTATIONS AND WARRANTIES**

2 9.1 The Parties represent that they are the proper Parties to the Consent Judgment.
3 Mattel warrants and represents that the individuals signing the Consent Judgment on its behalf do
4 so in their official capacities and are fully authorized by Mattel to enter into the Consent
5 Judgment and to legally bind Mattel to all of the terms and conditions of the Consent Judgment.

6 9.2 The Consent Judgment contains the complete agreement between the Parties. No
7 promises, representations, or warranties other than those set forth in the Consent Judgment have
8 been made by any Party.

9 **10.0 MISCELLANEOUS PROVISIONS**

10 10.1 The terms of the Consent Judgment will be governed by California law.

11 10.2 Any headings or subheadings used herein are for reference purposes only and do
12 not affect the substantive provisions of the Consent Judgment.

13 10.3 The failure of any Party to exercise any rights under the Consent Judgment shall
14 not be deemed a waiver of any right or future rights. If any part of the Consent Judgment shall
15 for any reason be found or held invalid or unenforceable by any Court of competent jurisdiction,
16 such invalidity or unenforceability shall not affect the remainder of the Consent Judgment, which
17 shall survive and be construed as if such invalid or unenforceable part had not been contained
18 herein.

19 10.4 The Court may modify or terminate the Consent Judgment pursuant to the
20 agreement of the parties or for good cause shown, including, but not limited to, repeated
21 substantial violations by Mattel of this Consent Judgment. After making a good faith effort to
22 obtain the concurrence of the other party for the requested relief, which concurrence shall not be
23 unreasonably withheld, the Party seeking modification or termination may petition the Court for
24 such relief. In addition to the above, the Consent Judgment shall be terminable by Mattel or the
25 Attorney General at any time following the fifth anniversary of the Effective Date, upon the
26 provision of thirty (30) days advanced written notice; such termination shall be effective upon
27 the subsequent filing of a notice of termination with Superior Court of Alameda County.
28

1 10.5 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
5 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
6 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
7 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
8 resolved against the drafting Party should not be employed in the interpretation of this Consent
9 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

10 10.6 It is the mutual intent of the Parties to seek and to obtain Court approval of this
11 Consent Judgment without undue delay.

12 10.7 This Consent Judgment contains the sole and entire agreement and understanding
13 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any Party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
17 deemed to exist or to bind any of the Parties.

18 10.8 The stipulations to this Consent Judgment may be executed in counterparts and by
19 means of electronic transmission, which taken together shall be deemed to constitute one
20 document.

21 **11.0 SERVICE OF NOTICE AND PROCESS**

22 Service of notices and process required by the Consent Judgment or its enforcement shall
23 be served on the following persons, or any person subsequently designated by the Parties:

24 For the Attorney General:

25 Harrison M. Pollak, Deputy Attorney General
26 Office of the California Attorney General
27
28