



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

VIVEK KUMAR, Derivatively on Behalf
of Nominal Defendant, MATTEL, INC.,

Plaintiff,

vs.

R. TODD BRADLEY, RICHARD
DICKSON, JOSEPH J. EUTENEUER,
ADRIANA CISNEROS, MICHAEL J.
DOLAN, YNON KREIZ, SOREN T.
LAURSEN, ANN LEWNES, ROGER
LYNCH, DOMINIC NG, JUDY D.
OLIAN, and VASANT M. PRABHU,

Defendants,

and

MATTEL, INC.,

Nominal Defendant.

C.A. No. 2020-0552-MTZ

PUBLIC VERSION REDACTED
JULY 10, 2020

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff Vivek Kumar (“Plaintiff”), by and through his undersigned attorneys, submits this Verified Shareholder Derivative Complaint (the “Complaint”) against defendants named herein. Plaintiff alleges the following based upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, the investigation conducted by and under the supervision of his counsel which included, among other things: (a) a review and analysis of regulatory filings filed by Mattel, Inc. (“Mattel” or the “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) a review and analysis of press releases and media reports issued and disseminated by Mattel; (c) a review of other publicly available information concerning Mattel, including articles in the news media, analyst reports, and statements and/or conclusions published by consumer protection agencies; (d) documents produced by Mattel pursuant to 8 Del. C. § 220; and (e) applicable rules and regulations.

SUMMARY OF THE ACTION

1. This is a shareholder’s derivative action brought for the benefit of Nominal Defendant Mattel, a publicly traded company incorporated in Delaware, against certain current and former members of the Company’s Board of Directors (the “Board”) and certain of its current executive officers (collectively,

the “Individual Defendants”) seeking to remedy the Individual Defendants’ violations of federal and state law and breaches of fiduciary duty.

2. Mattel is a world leader in the manufacturing of toys and children’s entertainment products. The Company engages in the design, manufacturing, and marketing of toy products that are sold throughout the world directly to consumers and through retail channels. Mattel’s products include branded fashion dolls, infant and preschool products, toy cars, and electrical vehicles.

3. In addition to operating under the Mattel brand name, the Company functions through multiple subsidiaries. One such subsidiary is Fisher-Price, Inc. (“Fisher-Price”).

4. Fisher-Price’s business model focuses on the manufacturing of toys for infants and small children. Additionally, Fisher-Price manufactures highchairs, playpens, car seats, and infant sleepers, amongst other products targeted towards infants and young toddlers. Further, Fisher-Price licenses its name to manufacturers of apparel, shoes, books, and other children’s products. Similar to its parent company, Mattel, Fisher-Price engages in the worldwide sale and distribution of its products.

5. One such product marketed, distributed, and sold by Mattel, through Fisher-Price, is the Rock ‘n Play Sleeper (the “Rock ‘n Play Sleeper” or the “Product”). The Rock ‘n Play Sleeper was marketed and sold as an inclined infant

sleeper until April 12, 2019. The Product was touted as suitable for all-night and/or prolonged sleep. According to the packaging materials that accompanied the Rock ‘n Play Sleeper, a “[b]aby can sleep at a comfortable incline all night long!”. Moreover, through the naming convention of the Product and other marketing materials, the Company intentionally and consciously advertised and marketed the Product as suitable for extended nighttime sleep for infants and small children.

6. Although Mattel, and its subsidiary Fisher-Price, advertised and marketed the Rock ‘n Play Sleeper as safe for nighttime and prolonged sleep, the Product is inherently unsafe. The promotion of the Rock ‘n Play Sleeper as an extended sleep option for infants and small children resulted in many documented instances of infant deaths and serious injuries.

7. The design of the Rock ‘n Play Sleeper results in an infant being positioned at a thirty (30) degree incline which significantly increases the likelihood that an infant’s head will slip into a dangerous, and potentially fatal, position constricting the windpipe, and/or causing the infant’s face to be pressed against the Product’s padded fabric restricting airflow. The infant is unlikely to be able to correct this positioning, which can, and did, result in death.

8. The American Academy of Pediatrics (“AAP”) repeatedly issued warnings relating to the risks associated with inclined sleepers. As a result of these

inherent risks, regulators in other countries prevented the Rock ‘n Play Sleeper to be marketed as a sleeper.

9. Throughout the marketing and sale of the Rock ‘n Play Sleeper there have been at least thirty-two (32) infant deaths caused by the Product and hundreds of injuries. All the while, the Individual Defendants ignored these documented instances and the inherent safety concerns associated with the Rock ‘n Play Sleeper by willfully and intentionally marketing the Product as a “sleeper.”

10. On April 5, 2019, Fisher-Price and the Consumer Product Safety Commission (“CPSC”) issued a joint statement which disclosed that since 2015 ten (10) infants died while using the Rock ‘n Play Sleeper, and warned that the Product should not be used once an infant reaches three (3) months of age or as soon as the infant is able to rollover.

11. On April 8, 2019, Consumer Reports published an article entitled *Fisher-Price Rock ‘n Play Sleeper Should Be Recalled, Consumer Reports Says* (the “Consumer Reports Article”). According to the Consumer Reports Article, an investigation conducted by Consumer Reports found that the Rock ‘n Play Sleeper is associated with the fatality of at least 32 infants.

12. Following the Consumer Reports Article, the AAP issued a press release demanding a recall of the Rock ‘n Play Sleeper and once again urging parents to stop using the Rock ‘n Play Sleeper.

13. Finally, after years of ignoring warnings regarding the risks associated with the Rock ‘n Play Sleeper, the Defendants were forced to recall all Rock ‘n Play Sleepers on April 12, 2019 (the “Recall”).

14. As a result of the deficient nature of the Company’s safety and quality control procedures and the inherently unsafe nature of the Rock ‘n Play Sleeper, as well as the subsequent Recall, the Company is now subject to numerous lawsuits including products liability and wrongful death claims.

15. On December 2, 2019, Plaintiff sent to Defendants a shareholder demand pursuant to Del. Ch. Ct. R. 23.1 *et seq.* (“Plaintiff’s Litigation Demand”) demanding that Mattel’s board of directors “take action to remedy breaches of fiduciary duty by certain current and former officers and directors of the Company as set forth herein.” *A true and correct copy of Plaintiff’s Litigation Demand is attached hereto as Exhibit A.*

16. As explained in detail below, the Board has improperly and unreasonably refused Plaintiff’s Litigation Demand in breach of their fiduciary duties.

17. As a result of the Board’s unreasonable refusal of Plaintiff’s Litigation Demand, Plaintiff should be permitted to proceed and to prosecute this action derivatively on behalf of the Company.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

19. As officers and directors of a Delaware corporation, the Individual Defendants (defined below) have consented to jurisdiction of this Court pursuant to 10 Del. C. § 3114.

20. This Court has jurisdiction over Mattel pursuant to 10 Del. C. § 3111.

PARTIES

21. Plaintiff Vivek Kumar is currently and has continuously been a stockholder of Mattel since December 29, 2016. Plaintiff is a citizen of New Jersey.

22. Nominal Defendant Mattel is incorporated under the laws of the State of Delaware and maintains its headquarters in El Segundo, California.

Ynon Kreiz

23. Defendant Ynon Kreiz (“Kreiz”) is the Company’s Chairman and Chief Executive Officer (“CEO”). Kreiz has been a director since June 13, 2017, CEO since April 2018, and Chairman since May 2018.

24. According to the Company’s DEF 14A Proxy Statement filed on April 27, 2020 (the “2020 Proxy Statement”), as of April 13, 2020, Kreiz beneficially owns 217,372 shares of the Company’s common stock.

25. According to the Company’s 2020 Proxy Statement, in 2019 Defendant Kreiz received total compensation of \$15,514,997. This included \$1,500,000 in

salary, \$7,162,507 in stock awards, \$2,387,499 in option awards, \$4,346,100 in non-equity incentive plan compensation, and \$118,891 in other compensation.

26. According to the 2020 Proxy Statement, in 2018 Defendant Kreiz received total compensation of \$16,955,660. This included \$1,027,397 in salary, \$6,657,261 in stock awards, \$6,506,946 in option awards, \$2,695,384 in non-equity incentive plan compensation, and \$68,672 in other compensation.

27. As stated in the 2020 Proxy Statement, Defendant Kreiz lacks independence.

28. The Company's 2020 Proxy Statement stated the following about Defendant Kreiz:

Mr. Kreiz brings to Mattel's Board of Directors significant leadership, finance, multimedia, entertainment, and content experience, and during his tenure as a director of Mattel has gained a deep understanding of Mattel's business and the toy industry. As a former Chief Executive Officer of a number of global media companies and a board member of Warner Music Group Corp., he brings a valuable perspective on the entertainment, digital, and media industries, including a focus on children's programming. He was also General Partner at Balderton Capital where he was active in early stage technology and media investments.

Richard Dickson

29. Defendant Richard Dickson ("Dickson") has served as the Company's President and Chief Operating Officer ("COO") since April 2015. Previously Dickson served as President and Chief Brands Officer from May 2014 to January 2015.

30. According to the Company's 2020 Proxy Statement, as of April 13, 2020, Dickson beneficially owns 2,387,547 shares of the Company's common stock.

31. According to the Company's 2020 Proxy Statement, in 2019 Dickson received total compensation of \$7,746,544. This included \$1,000,000 in salary, \$3,557,773 in stock awards, \$1,125,002 in option awards, \$1,931,600 in non-equity incentive plan compensation, and \$132,169 in other compensation.

32. According to the Company's 2020 Proxy Statement, in 2018 Dickson received total compensation of \$8,040,735. This included \$1,000,000 in salary, \$500,000 in bonus, \$3,539,878 in stock awards, \$1,125,000 in option awards, \$1,749,000 in non-equity incentive plan compensation, and \$126,857 in other compensation.

33. According to the Company's 2020 Proxy Statement, in 2017 Dickson received total compensation of \$8,727,571. This included \$992,055 in salary, \$500,000 in bonus, \$2,584,491 in stock awards, \$4,500,000 in option awards, and \$151,025 in other compensation.

34. The Company's 2020 Proxy Statement stated the following about Defendant Dickson:

Mr. Dickson has been President and Chief Operating Officer since April 2015. From January 2015 to April 2015, he served as President, Chief Brands Officer. He served as Chief Brands Officer from May 2014 to January 2015. From February 2010 to May 2014, he served as President and CEO of Branded Businesses at The Jones Group, Inc. From August 2008 to February 2010, he served as General Manager

and Senior Vice President of the Barbie Brand at Mattel. From 2000 to 2008, he was Senior Vice President at Mattel overseeing Consumer Products, Marketing, Media, Entertainment, and Packaging. Prior to Mattel, he served as Vice President of Brand Management and Merchandising at Estee Lauder Companies, Inc. and was Principal with Gloss.com, an e-commerce beauty website he helped develop and manage until its acquisition by Estee Lauder. Mr. Dickson started his career and spent nearly a decade with Bloomingdale's, a leading U.S. fashion retailer.

(Footnote omitted).

Joseph J. Euteneuer

35. Defendant Joseph J. Euteneuer ("Euteneuer") has served as the Company's Chief Financial Officer ("CFO") since September 2017.

36. According to the Company's 2020 Proxy Statement, as of April 13, 2020, Euteneuer beneficially owns 608,088 shares of the Company's common stock.

37. According to the Company's 2020 Proxy Statement, in 2019 Defendant Euteneuer received total compensation of \$5,604,091. This included \$900,000 in salary, \$200,000 in bonus, \$2,025,004 in stock awards, \$675,000 in option awards, \$1,580,400 in non-equity incentive plan compensation, and \$223,687 in other compensation.

38. According to the 2020 Proxy Statement, in 2018 Defendant Euteneuer received total compensation of \$5,341,577. This included \$900,000 in salary, \$2,070,558 in stock awards, \$674,999 in option awards, \$1,431,000 in non-equity incentive plan compensation, and \$265,020 in other compensation.

39. According to the 2020 Proxy Statement, in 2017 Defendant Euteneuer received total compensation of \$5,277,089. This included \$241,644 in salary, \$500,000 in bonus, \$2,586,570 in stock awards, \$1,900,000 in option awards, and \$48,875 in other compensation.

40. The Company's 2020 Proxy Statement stated the following about Defendant Euteneuer:

Mr. Euteneuer has been Chief Financial Officer since September 2017. From May 2016 to September 2017, he served as Co-Chief Executive Officer and Chief Financial Officer of the Americas of Rivada Networks, LLC., a communications technology business. From April 2011 to August 2015, he served as Chief Financial Officer of Sprint Corporation, a wireless communications company. Mr. Euteneuer was Chief Financial Officer and Executive Vice President of Qwest Communications, a wireline telecom company, from 2008 to 2011. Before joining Qwest Communications, he served as Chief Financial Officer and Executive Vice President of XM Satellite Radio Holdings from 2002 to 2008. From 1988 to 2002, Mr. Euteneuer held several executive roles at Comcast Corporation, including Chief Financial Officer and Executive Vice President of Comcast Corporation's Business Communications/Broadnet Europe from 2000 to 2002; and earlier, Vice President, Corporate Development, and Corporate Controller from 1988 to 2000. Prior to joining Comcast, he served as Chief Operating Officer of LaCanasta Mexican Foods International. Earlier in his career, Mr. Euteneuer held leadership roles at Deloitte and PricewaterhouseCoopers. He is a Certified Public Accountant.

(Footnote omitted).

41. On October 29, 2019, the Company issued a press release announcing that Euteneuer would leave the Company after a transition period of up to six months.

42. Euteneuer's departure from the Company is related to an internal investigation of the Company's accounting errors raised by a whistleblower, which revealed discrepancies surrounding Mattel's income tax expenses.

43. On April 6, 2020, Mattel filed a form 8-K with the SEC announcing that "given the unprecedented events surrounding COVID-19 . . . Mr. Euteneuer's tenure as CFO has been extended. Due to the uncertainty of the duration of the disruption, an end date has not yet been established."

R. Todd Bradley

44. Defendant R. Todd Bradley ("Bradley") has served as a Director of the Company since 2018 and serves on the Company's audit committee, as well as the compensation committee.

45. According to the Company's 2020 Proxy statement, as of April 13, 2020, Bradley did not beneficially own any shares of the Company's common stock.

46. According to the Company's 2020 Proxy Statement, in 2019 Bradley received total compensation of \$249,996. This included \$110,000 in cash and \$139,996 in stock awards.

47. On March 14, 2018, the Company issued a press release which stated the following about Defendant Bradley:

Todd Bradley brings expansive global supply chain management and operating experience to Mattel's board. Mr. Bradley has deep expertise in optimizing manufacturing and logistics networks to maximize agility, meeting the needs of today's demand-led marketplace. He also

has extensive experience in China – a key growth market for Mattel – where he has built and managed highly successful partnerships to help establish and grow brand engagement and awareness. Most recently, Mr. Bradley served as CEO of Mozido, Inc., a leading digital payment and mobile commerce provider. Prior to that, Mr. Bradley served as president of TIBO Software, Inc., an integration, analytics and event-processing software company. Previously, Mr. Bradley held senior leadership positions with the Hewlett-Packard Company, including Executive Vice President of Strategic Growth Initiatives, Executive Vice President of Printing and Personal Systems Group, and Executive Vice President of the Personal Systems Group. Mr. Bradley also served as CEO of PalmOne, Inc., the pioneering personal digital assistant (PDA) maker that helped pave the way for smartphones and other connected mobile devices.

Adriana Cisneros

48. Defendant Adriana Cisneros (“Cisneros”) has served as a Director of the Company since 2018 and serves on the Company’s governance and social responsibility committee.

49. According to the Company’s 2020 Proxy Statement, in 2019 Cisneros received total compensation of \$247,496. This included \$100,000 in cash, \$139,996 in stock awards, and \$7,500 in other compensation.

50. According to the Company’s 2020 Proxy Statement, as of April 13, 2020, Cisneros did not beneficially own any shares of the Company’s common stock.

51. On August 13, 2018, the Company issued a press release which stated the following about Defendant Cisneros:

Adriana Cisneros, 38, brings extensive global business, media and

entertainment experience to Mattel’s Board. Ms. Cisneros currently serves as CEO of Cisneros, a global enterprise focused on media and entertainment, digital advertising solutions, real estate and social leadership. Previously, Ms. Cisneros served in a variety of leadership capacities with Cisneros, including Vice Chairman and Director of Strategy before assuming the role of CEO. She also currently serves as President of Fundación Cisneros, a not-for-profit organization dedicated to improving access to education in Latin America.

In addition, Ms. Cisneros serves as a Director and Executive Committee Member of the Board of the International Academy of Television Arts & Sciences, a Trustee of the Paley Center for Media and Co-Chair of Endeavor Miami, an organization dedicated to promoting high impact entrepreneurship. Ms. Cisneros is a member of the Latin American Acquisitions Committee of the Museum of Modern Art (“MoMA”) in New York City. Chosen as a Henry Crown Fellow by the Aspen Institute, Ms. Cisneros also served as a Term Member at the Council of Foreign Relations (2011 – 2016). She earned a Bachelor’s Degree from Columbia University, and a Master’s Degree in journalism from New York University. She is a graduate of Harvard Business School’s Program for Leadership Development (2010).

Michael J. Dolan

52. Defendant Michael J. Dolan (“Dolan”) has served as a Director of the Company since 2004 and serves on the Company’s governance and social responsibility committee. Additionally, Dolan is the chair of both the compensation committee and the executive committee.

53. According to the Company’s 2020 Proxy Statement, as of April 13, 2020, Dolan beneficially owns 141,860 shares of the Company’s common stock.

54. According to the Company's 2020 Proxy Statement, in 2019 Dolan received total compensation of \$319,996. This included \$165,000 in cash, \$139,996 in stock awards, and \$15,000 in other compensation.

55. The Company's 2020 Proxy Statement stated the following about Defendant Dolan:

As a former Chief Executive Officer of a large global company, Mr. Dolan brings to Mattel's Board significant leadership, finance, global consumer products and branding, strategic marketing, and operations experience. Mr. Dolan also brings a valuable perspective on the entertainment industry through his experience as the former Chief Executive Officer of IMG, which is important to Mattel since many of our most popular toys are derived from licensed entertainment properties. In addition, Mr. Dolan's long tenure with Young & Rubicam enables him to provide unique insights into brand building and advertising. Mr. Dolan has also gained valuable experience as the Chief Financial Officer of IMG, Viacom, and Young & Rubicam, where he dealt with complex accounting principles and judgments, internal controls, and financial reporting rules and regulations, and evaluated the financial results and financial reporting processes of large companies.

Soren T. Laursen

56. Defendant Soren T. Laursen ("Laursen") has served as a Director of the Company since 2018 and serves on the Company's governance and social responsibility committee, as well as the finance committee.

57. Until September 30, 2019, the Company conceded that Laursen lacked independence. However, according to the Company's 2020 Proxy Statement, Mattel

purports that Laursen is independent after ending his service as Interim Executive Director.

58. According to the Company's 2020 Proxy Statement, as of April 13, 2020, Laursen beneficially owns 10,373 shares of the Company's common stock.

59. According to the Company's 2020 Proxy Statement, in 2019 Laursen received total compensation of \$378,486. This included \$58,333 in cash, \$81,667 in stock awards, and \$238,486 in other compensation.

60. On October 10, 2018, the Company issued a press release which stated the following about Defendant Laursen:

Mr. Laursen brings significant global commercial toy experience to Mattel, with deep expertise in developing strong brand franchises supported by compelling media, digital and technology activations. He most recently served as CEO of TOP-TOY Holding, the largest retailer of toys and children's products in the Nordic region, operating approximately 300 retail locations across Denmark, Finland, Iceland, Norway and Sweden, along with multiple stores in Germany. Prior to that, Mr. Laursen held a variety of senior leadership roles with The LEGO Group for more than 25 years. Mr. Laursen served as President of LEGO Systems, Inc., from 2004 to 2016 and held a variety of senior leadership roles overseeing various international markets, including Europe and Asia/Pacific. Mr. Laursen serves as an advisor to The Toy Association – the leading toy industry trade group – where he also served as a member of the association's Board of Directors from 2004 to 2014, and as Chairman from 2012 to 2014.

Ann Lewnes

61. Defendant Ann Lewnes ("Lewnes") has served as a Director of the Company since 2015 and also serves on the Company's executive committee.

Additionally, Lewnes is the chair of the Company's governance and social responsibility committee.

62. According to the Company's 2020 Proxy Statement, as of April 13, 2020, Lewnes beneficially owns 17,528 shares of the Company's common stock.

63. According to the Company's 2020 Proxy Statement, in 2019 Lewnes received total compensation of \$269,996. This includes \$115,000 in cash, \$139,996 in stock awards, and \$15,000 in other compensation.

64. The Company's 2020 Proxy Statement stated the following about Defendant Lewnes:

As a global media and marketing leader in the technology industry, Ms. Lewnes brings to Mattel's Board her significant leadership experience in branding, advertising, technology, and financial management marketing. She also brings experience in driving strategic growth and global demand at two public technology companies, as well as her experience serving on the boards of nonprofit entities. At Adobe, Ms. Lewnes is responsible for Adobe's corporate brand, corporate communications, and integrated marketing efforts worldwide, and has spearheaded the transformation of the company's global marketing efforts to be digital-first and data-driven. At Intel, Ms. Lewnes played a key role globally positioning the business and products to consumers, business professionals, and key computer channels.

Roger Lynch

65. Defendant Roger Lynch ("Lynch") has served as a Director of the Company since 2018 and serves on the Company's audit committee, as well as the finance committee.

66. According to the Company's 2020 Proxy Statement, as of April 13, 2020, Lynch beneficially owns 8,000 shares of the Company's common stock.

67. According to the Company's 2020 Proxy Statement, in 2019 Lynch received total compensation of \$264,996. This included \$110,000 in cash, \$139,996 in stock awards, and \$15,000 in other compensation.

68. On August 13, 2018, the Company issued a press release which stated the following about Defendant Lynch:

Roger Lynch, 55, a recognized leader in the digital entertainment and content delivery industries, serves as President and CEO of Pandora, the streaming music provider. Prior to joining Pandora in 2017, Mr. Lynch served as the founding CEO of Sling TV Holding L.L.C., the streaming television service of DISH Network LLC that delivers live sports, news and entertainment to broadband-connected devices. Before that, he served as Executive Vice President, Advanced Technologies of DISH, from 2009 to 2012.

Earlier in his career, Mr. Lynch served as Chairman and CEO of Video Networks International, Ltd., an internet protocol television provider in the United Kingdom. While at Video Networks he won an Emmy® for Scamp, an on-demand children's channel, and a BAFTA (British Academy of Film and The Arts) for V:MX, a collection of on-demand music video channels. Mr. Lynch also served as President and CEO of Chello Broadband N.V., a broadband internet service provider with operations in 10 European countries. Prior to Chello, Mr. Lynch was an investment banker with Morgan Stanley. Mr. Lynch began his career as a Member of the Technical Staff (Physics) at the Hughes Aircraft Company. He is currently a member of the Board of Directors of Pandora, and the Board of Overseers of the Tuck School at Dartmouth College. Mr. Lynch earned a Bachelor's Degree in Physics from the University of Southern California, and an MBA with highest distinction from the Tuck School of Business at Dartmouth College.

Dominic Ng

69. Defendant Dominic Ng (“Ng”) has served as a Director of the Company since 2006 and serves as chair of the Company’s finance committee. Additionally, Ng serves on the Company’s audit committee and the executive committee.

70. According to the Company’s 2020 Proxy Statement, as of April 13, 2020, Ng beneficially owns 9,500 shares of the Company’s common stock.

71. According to the Company’s 2020 Proxy Statement, in 2019 Ng received total compensation of \$279,996. This includes \$125,000 in cash, \$139,996 in stock awards, and \$15,000 in other compensation.

72. The Company’s 2020 Proxy Statement stated the following about Defendant Ng:

As the Chief Executive Officer of one of the largest independent banks headquartered in Southern California, Mr. Ng brings to Mattel’s Board significant experience in leadership, strategy, business development, and global business. He also has valuable experience in dealing with complex accounting principles and judgments, internal controls, and financial reporting rules and regulations, and evaluating financial results and financial reporting processes of large companies. Mr. Ng transformed East West Bank from a small savings and loan association based in Los Angeles into a large, full service commercial bank with exclusive focus on the United States and Greater China markets. Mr. Ng’s extensive experience conducting business in China is extremely valuable to Mattel because of Mattel’s large manufacturing presence in China and emerging markets initiatives (including China). He also brings to Mattel’s Board extensive business and governmental relationships in the State of California and the greater metropolitan area of Los Angeles, where Mattel is headquartered.

Judy D. Olian

73. Defendant Dr. Judy D. Olian (“Olian”) has served as a Director of the Company since 2018 and serves on the Company’s compensation committee, as well as the governance and social responsibility committee.

74. According to the Company’s 2020 Proxy Statement, as of April 13, 2020, Olian does not beneficially own any shares of the Company’s common stock.

75. According to the Company’s 2020 Proxy Statement, in 2019 Olian received total compensation of \$254,996. This included \$100,000 in cash, \$139,996 in stock awards, and \$15,000 in other compensation.

76. The Company’s 2020 Proxy Statement stated the following about Defendant Olian:

As the President of Quinnipiac University, and former Dean of the UCLA Anderson School of Management for over 12 years, Dr. Olian brings to Mattel’s Board her extensive leadership record in running large organizations, as well as her professional expertise in human resource management, top management teams, and management strategy. She also has extensive board experience in publicly traded and non-profit boards. Prior to her most recent roles, she serves as Dean of Penn State’s Smeal College of Business, and in various faculty and leadership roles at the University of Maryland. She was also a management consultant, and chairman of AACSB International, the premier accrediting and thought leadership organization for global business schools.

Vasant M. Prabhu

77. Defendant Vasant M. Prabhu (“Prabhu”) served as a Director of the Company from 2007 until 2020 when he did not stand for re-election. Prabhu served

as chair of the Company's audit committee. Additionally, Prabhu served on the Company's finance committee and executive committee.

78. According to the Company's 2020 Proxy Statement, as of April 13, 2020, Prabhu beneficially holds 45,242 shares of the Company's common stock.

79. According to the Company's 2020 Proxy Statement, in 2019 Prabhu received total compensation of \$269,996. This included \$130,000 in cash and \$139,996 in stock awards.

80. The Company's current Board is comprised of nine directors: Bradley, Cisneros, Dolan, Kreiz (Chairman), Laursen, Lewnes, Lynch, Ng, and Olian.

81. Defendants Euteneuer, Kreiz, Dickson, Bradley, Cisneros, Dolan, Laursen, Lewnes, Lynch, Ng, Olian, and Prabhu are sometimes collectively referred to herein as the "Individual Defendants."

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

82. By reason of their positions as officers, directors and/or fiduciaries of Mattel and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed Mattel and its shareholders fiduciary obligations of loyalty, care and good faith, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest and equitable manner. The Individual Defendants were and are required to act in

furtherance of the best interests of Mattel and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

83. Each director and officer of the Company owed and owes to Mattel and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company's affairs and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

84. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Mattel, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company. Due to their positions with Mattel, each of the Individual Defendants had knowledge of material non-public information regarding the Company.

85. To discharge their duties, the Individual Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Mattel were required to, among other things:

- a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

- b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal, state and foreign laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;
- c. Exercise good faith in supervising the preparation, filing and/or dissemination of financial statements, press releases, audits, reports or other information required by law, and in examining and evaluating any reports or examinations, audits, or other financial information concerning the financial condition of the Company;
- d. Refrain from unduly benefiting themselves and other Company insiders at the expense of the Company; and
- e. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

86. Moreover, Mattel maintains a Code of Conduct (the "Code"), which applies to all Mattel employees and contains "[c]ertain specified provisions . . . [that]

apply to members of Mattel’s Board of Directors (“Directors”) in their capacity as such.” The Code states the following, in part:

Employees and Directors must act in the best interests of Mattel, without considering personal interests or the potential for personal benefit.

* * *

Product Quality and Safety

Mattel’s reputation for product quality and safety is one of its most valuable assets. Our commitment to product quality and safety is part of our design, manufacturing, testing and distribution processes, and is key to the success of Mattel’s business.

Children’s health, safety and well-being are our primary concern. We will meet or exceed legal requirements and industry standards for product quality and safety. We work every day to earn the trust of our consumers through our dedication to safety by making products that parents can trust.

* * *

Employees and Directors must comply with the laws, rules and regulations wherever Mattel does business.

87. The Company also has an Audit Committee, a Compensation Committee, a Governance and Social Responsibility Committee, a Finance Committee, and an Executive Committee. Each committee has a respective charter to govern the committee members’ duties and responsibilities.

88. The Audit Committee Charter states the following, in part:

The purpose of the Audit Committee (the “Committee”) is to provide assistance to the Board of Directors (the “Board”) of Mattel, Inc. (the

“Company”) in fulfilling the Board’s oversight responsibilities regarding (a) the accounting and financial reporting processes of the Company, including the quality and integrity of the Company’s financial reporting and the audits of the Company’s financial statements, (b) the independence, qualifications and performance of the Company’s independent auditor (c) the performance of the Company’s internal audit function and (d) the compliance by the Company with legal and regulatory requirements. In so doing, the Committee should endeavor to maintain free and open means of communication between the members of the Committee, other members of the Board, the independent auditor and the management of the Company.

* * *

The Committee shall make regular reports to the Board. The Committee shall review and reassess the adequacy of this Charter annually and recommend any proposed changes to the Board for approval. The Committee shall annually review the Committee’s own performance.

89. The Compensation Committee Charter states the following, in part:

The purpose of the Compensation Committee (the “Committee”) is to develop, evaluate, and in certain instances approve or determine the compensation plans, policies, and programs of Mattel, Inc. (the “Company”). The Committee has the authority to undertake and may exercise all of the powers of the Board of Directors (the “Board”) with respect to the specific responsibilities listed below and will have the authority to undertake such other specific responsibilities as the Board from time to time prescribes.

90. The Governance and Social Responsibility Committee Charter states the following, in part:

The primary purposes of the Governance and Social Responsibility Committee (the “Committee”) are (a) to assist the Board of Directors (the “Board”) of Mattel, Inc. (the “Company”) by identifying individuals qualified to become Board members, consistent with the criteria approved by the Board, and to select, or to recommend that the Board select, the director nominees for the next annual meeting of

stockholders; (b) to develop and recommend to the Board the Corporate Governance Guidelines applicable to the Company; (c) to lead the evaluation of the Board's performance; (d) to recommend to the Board director nominees for each committee; **(e) to assist the Board with oversight and review of social responsibility matters such as sustainability, corporate citizenship, community involvement, global manufacturing principles, public policy matters and environmental, health and safety issues;** and (f) to provide oversight with regard to philanthropic activities of the Company. The Committee also works closely with the Chief Executive Officer and other members of the Company's management to assure that the Company is governed effectively and smoothly.

* * *

The Committee shall review with management the impact of the Company's business operations and business practices with respect to issues such as environmental, health and safety matters, sustainability, corporate citizenship, community involvement, diversity and equal opportunity matters.

The Committee shall receive reports from management at least annually with regard to the implementation and audits of the Company's Responsible Supply Chain Standards, as well as the Company's work with industry organizations and non-governmental organizations. The Committee shall review with management any proposed public Corporate Social Responsibility reports.

(Emphasis added).

91. Each Individual Defendant, by virtue of his/her position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, care and good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual

Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and/or officers of Mattel, the absence of good faith on their part and a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company.

92. The Individual Defendants breached their duties of loyalty, care, and good faith by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) failing to adequately determine the safety of the Rock ‘n Play Sleeper; (iii) failing to exercise their oversight duties by not monitoring the Company’s compliance with its own procedures and federal and state regulations; (iv) making and/or causing the Company to make false and misleading statements and/or material omissions; (v) failing to adequately consider and apply generally acceptable medical opinions and guidance in relation to infant and toddler sleep positioning and the sleeper products manufactured, marketed, and sold by the Company and its subsidiaries; (vi) failing to proactively seek the opinion and advice of medical expert(s) in relation to the Company’s sleeping products; (vii) willfully and intentionally introducing a product into the marketplace while knowing of or willfully disregarding the Product’s inherent safety deficiencies; (viii) failing to have a sufficient incident response plan to immediately address the dangers associated with the Rock ‘n Play Sleeper; (ix) consciously disregarding, delaying, and failing

to ensure that the Company notified the general public upon discovery that the Rock ‘n Play Sleeper was inherently dangerous and may lead to death; (x) failing to timely disclose the Company’s internal findings regarding the dangerousness of the Rock ‘n Play Sleeper; and (xi) allowing the Company to violate state and federal laws and regulations.

SUBSTANTIVE ALLEGATIONS

A. Background

93. Mattel is a world leader in the manufacturing of toys and children’s entertainment products. The Company engages in the design, manufacturing, and marketing of toy products that are sold throughout the world directly to consumers and through retail channels. Mattel’s products include branded fashion dolls, infant and preschool products, toy cars, and electrical vehicles.

94. The Company was founded in California in 1945 by Harold “Matt” Matson and Elliot Handler. In 1948, the Company was incorporated in California with its headquarters in Los Angeles. The Company went public in 1960 and began trading on the New York Stock Exchange (“NYSE”) in 1963. The Company then reincorporated in Delaware in 1968, and in 2009 moved its stock listing from the NYSE to the Nasdaq. The Company’s securities are listed on the Nasdaq under the ticker symbol “MAT.”

95. In addition to operating under the Mattel brand name, the Company functions through multiple subsidiaries. One such subsidiary is Fisher-Price, Inc.

96. Fisher-Price's business model focuses on the manufacturing of toys for infants and small children. Additionally, Fisher-Price manufactures highchairs, playpens, car seats, and infant sleepers, amongst other products targeted towards infants and young toddlers. Further, Fisher-Price licenses its name to manufacturers of apparel, shoes, books, and other children's products. Similar to its parent company, Mattel, Fisher-Price engages in the worldwide sale and distribution of its products.

97. Mattel and Fisher-Price both boast that they create and produce products safe for children. Mattel's website states "[w]hen we design and engineer our toys, we strive to make them safe for children."¹ Mattel's website further states "What's the most important part of creating a toy? Making sure it's safe."² The claims continue:

Mattel designs and engineers thousands of toys and other children's products and each model is evaluated to make sure it meets stringent safety standards. Our internal product safety procedures are designed to meet or exceed regulations and laws enforced by the U.S. Consumer Product Safety Commission (CPSC) and their regulatory counterparts around the world. We operate 10 high-tech labs where our products are tested for safety, quality, and durability. Our labs – which are cpsc

¹ Mattel, *Citizenship Overview*, <http://citizenship.mattel.com/overview/index.htm> (last visited June 16, 2020).

² Mattel, *Inspired Design*, <http://citizenship.mattel.com/inspired-design/index.htm> (last visited June 16, 2020).

approved and ISO 17025 accredited – are equipped to drop, age, burn, twist, push and pull our products to test all aspects of safety before they arrive in your home and end up in the hands of children.³

98. Fisher-Price’s website notes:

“Parents have trusted us for more than 80 years to provide safe products for their children, but we know we must still earn their trust every day,” says Kitty Pilarz, Vice President of Product Safety & Regulatory Compliance at Fisher-Price. “So, right from the start of a design concept, we work to make sure our products are as safe as they can be.”⁴

99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. The Rock ‘n Play Sleeper

a. Development and Release to Market

100. The Rock ‘n Play Sleeper was introduced to the U.S. market in 2009 and has become a tremendously popular product for the Company. Over the next ten years, the Company sold nearly 4.7 million Rock ‘n Play Sleepers at \$40 to \$149 each.⁵

³ *Id.*

⁴ Fisher-Price, *A safety story*, https://www.fisherprice.com/en_US/ourstory/safety/index.html (last visited June 16, 2020).

⁵ U.S. Consumer Prod. Safety Comm’n, *Fisher-Price Recalls Rock ‘n Play Sleepers Due to Reports of Deaths*, <https://www.cpsc>

101. The Rock ‘n Play Sleeper is an inclined “sleeper” that the Company has marketed as suitable for all night or prolonged sleep. The Fisher-Price website touted the Product for “naptime and nighttime,” and the Product’s packaging says things such as “Inclined sleeper designed for all-night sleep.”

102. Originally, the Company and Fisher-Price categorized the Rock ‘n Play as a “bassinet.” However, in 2010, the CPSC amended its standards applicable to cribs and bassinets. This caused the Company and Fisher-Price to seek an exemption for sleep products with an incline of more than ten (10) degrees. The CPSC granted the Company’s exemption, which allowed Mattel and Fisher-Price to continue to market the Rock ‘n Play Sleeper as a “sleeper.”⁶

103. According to the packaging materials that accompanied the Rock ‘n Play Sleeper, a “[b]aby can sleep at a comfortable incline all night long!” Moreover, through the naming convention of the Product and other marketing materials, the Company intentionally and consciously advertised the Product as suitable for extended nighttime sleep related to infants and small children.

104. The Company and the Individual Defendants believed that they developed another “Rockstar” product, selling millions of units of the Product and

.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths (last visited June 17, 2020).

⁶ Jessica Winter, *The Life and Death of a Wildly Popular Baby Sleeper*, *The New Yorker*, Apr. 15, 2019, <https://www.newyorker.com/culture/culture-desk/the-life-and-death-of-a-wildly-popular-baby-sleeper>.

claiming that “[t]here was no product on the market that safely [allowed an infant to sleep at an incline.]”⁷ But it was not long until questions began to arise about the safety of the Rock ‘n Play Sleeper.

105. According to the *Washington Post*, “Fisher-Price developed its revolutionary Product based on faulty beliefs about infant sleep, with no clinical research into whether it was safe, and, rather than seeking the advice of pediatricians, consulted just a single doctor — a family physician from Texas whose expertise had already been doubted by judges and who would eventually lose his medical license, according to a review by The Washington Post of thousands of pages of court depositions, emails and medical studies, along with interviews of doctors and regulators.”⁸ That family physician, Gary Deegear of San Antonio, had been consulting on Fisher-Price products for years.

106. The Product was invented by Linda Chapman (“Chapman”), a Fisher-Price designer. She came up with the idea based on outdated medical advice suggesting elevating a baby’s head can help a baby with gastric reflux.

⁷ Todd C. Frankel, *Fisher-Price invented a baby sleeper without safety tests and kept selling it, even as babies died*, Wash. Post, May 30, 2019, https://www.washingtonpost.com/business/economy/how-fisher-price-invented-a-popular-baby-sleeper-without-safety-tests-and-kept-it-on-the-market-even-as-babies-died/2019/05/30/78c2707a-7731-11e9-b3f5-5673edf2d127_story.html?arc404=true.

⁸ *Id.*

107. Chapman was deposed on March 21, 2018 in *Goodrich, et al. v. Fisher-Price, Inc.*, Case Number 1:16-cv-03116 (N.D. Ga. Aug. 24, 2016). Chapman indicated that when designing the Rock ‘n Play Sleeper she was proceeding on advice that she recalled her son’s pediatrician giving her when her son was young. Chapman indicated that she recalled her son’s pediatrician indicating that she should “elevate his head when sleeping. He said you could put a pillow underneath the mattress, or he didn’t really have a good way to do it.”

108. During the same deposition, Chapman, the designer of a product designed to be safe for infant sleep, was unable to identify the AAP standards for infant sleep and, more astonishing, was unaware of the term “supine.”

109. In 2009, two prominent groups of pediatric gastroenterologists released international consensus guidelines on managing stomach problems in babies, finding that elevating a baby’s head actually makes gastric reflux worse. The AAP adopted these findings.

110. Despite the new medical findings, the Company used the claim that elevating a baby’s head was beneficial in a 2010 letter to the CPSC, when the agency was considering regulating inclined sleepers, relying on information found in the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition from 2001, despite the fact that in 2010, when the Company wrote the letter, the guidance was updated to say that inclining babies was harmful.

111. At the time, the safety committee was led by Kitty Pilarz (“Pilarz”), a Fisher-Price engineer working as a product safety manager. Notably, Ms. Pilarz is now vice president of product safety and regulatory compliance for Fisher-Price.

112. In a deposition taken on March 21, 2018, during the *Goodrich et al. v. Fisher-Price, Inc.* case, Ms. Pilarz confirmed that Fisher-Price did not have medical professionals on staff. According to Ms. Pilarz, “Once I saw the concept and we started working on the concept, I did talk with our medical consultant about the concept.” She then confirmed that the medical consultant she spoke with was Dr. Deegear, the former family physician discussed above.

113. The Company’s safety committee should have been aware of these new guidelines.

b. Safety Concerns

114. Although Mattel, and its subsidiary Fisher-Price, advertised and marketed the Rock ‘n Play Sleeper as safe for nighttime and prolonged sleep, the Product is inherently unsafe, and the Individual Defendants were or should have been aware of the dangers associated with the Product.

115. The Company’s promotion of the Rock ‘n Play Sleeper as an extended sleep option for infants and small children drastically increased the likelihood of infant fatality and injury as demonstrated through the numerous documented instances of infant death and serious injuries.

116. The design of the Rock ‘n Play Sleeper results in an infant being positioned at a thirty (30) degree incline, which significantly increases the likelihood that an infant’s head will slip into a dangerous, and potentially fatal, position constricting the windpipe, and/or causing the infant’s face to be pressed against the Product’s padded fabric, restricting airflow. The infant is unlikely to be able to correct this positioning, which sometimes results in death.

117. Mattel, and Fisher-Price, instruct parents to keep babies strapped in the Rock ‘n Player Sleeper’s restraints throughout the time in which the infant is positioned within the Product, and therefore, these instructions increase the likelihood that the infant will be unable to correct or remediate the consequences of falling into a dangerous position. Furthermore, the Rock ‘n Play Sleeper increases the infant’s risk of developing flat head (plagiocephaly) and twisted neck (torticollis) syndromes.

118. The Company knew internally about the dangers and risks associated with the Rock ‘n Play Sleeper yet continued to sell the Product and market the Product as a “sleeper.”

119. [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

120. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

121. The Company and the Individual Defendants ignored the inherent and documented safety risks and concerns associated with the Rock ‘n Play Sleeper and willfully and intentionally marketed the Product as a sleeper suitable for all night and prolonged sleep in the United States.

122. Regulators in Canada and Australia refused to allow the Rock ‘n Play Sleeper to be marketed as a “sleeper” in their countries and further restricted Mattel from using the term “sleeper” in the Product’s name due to the known dangers associated with infants sleeping at an incline and the potential of the infant falling into a dangerous position while strapped in.

123. The AAP, consumer groups, and others have for years repeatedly issued warnings about the serious dangers of inclined sleepers.

124. The AAP guidelines have recommended since the mid-1990s that babies sleep faceup in an empty crib or bassinet to avoid accidental suffocation.

Specifically, “[t]o reduce the risk of SIDS, infants should be placed for sleep in a supine position (wholly on the back) for every sleep by every caregiver until the child reaches 1 year of age. Side sleeping is not safe and is not advised.”⁹ (Footnote omitted).

125. The Company ignored numerous safety warnings and the documented medical research regarding safe sleep positioning for infants. Moreover, Mattel never sought the advice and knowledge of pediatric and/or medical experts, other than the single doctor that was consulted at the time of the Product’s release.

126. According to the *Washington Post*, “the first time Fisher-Price hired a pediatrician to evaluate the Rock ‘n Play was eight years later, as part of the company’s defense in a product liability lawsuit, according to records.”¹⁰

127. While the Company was defending itself against multiple lawsuits related to the Rock ‘n Play Sleeper, including one involving an infant’s death and a second premised on an infant’s near-death, the Company continued to market and sell the Product as safe for prolonged and all-night sleep.

⁹ Task Force On Sudden Infant Death Syndrome, *SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment*, Pediatrics, Nov. 2016, <https://pediatrics.aappublications.org/content/138/5/e20162938>.

¹⁰ https://www.washingtonpost.com/business/economy/how-fisher-price-invented-a-popular-baby-sleeper-without-safety-tests-and-kept-it-on-the-market-even-as-babies-died/2019/05/30/78c2707a-7731-11e9-b3f5-5673edf2d127_story.html?arc404=true

128. One lawsuit filed by a Georgia couple alleged that the couple's 7-week-old son survived after being found blue and lifeless in a Rock 'n Play Sleeper in 2014. While napping, the 7-week-old became trapped due to the restraint straps. According to a subsequent visit to the baby's pediatrician, the doctor attributed the injuries sustained by the infant to be associated with "upper airway obstruction from [his] head being in a flexed position" because of the "ill design of the Rock 'n Play' Sleeper. The boy's grandmother, attorney Jan Hinson, helped lead the case, which was ultimately dismissed at the end of 2018 by a judge who found a lack of evidence to support the suit's product liability theory.¹¹

129. In 2015, a Texas couple filed a lawsuit against Fisher-Price after the couple's 2-month-old child asphyxiated in a Rock 'n Play Sleeper.¹² The case was later dismissed with prejudice in 2017 after the plaintiffs and defendants agreed to "compromise and resolve all matters at issue between them."¹³

130. Numerous other parents and caregivers have sued Mattel and Fisher-Price after infant death or injury from use of the Rock 'n Play Sleeper.

¹¹ Mot. to Exclude Expert Testimony of Roy Benaroch, at p. 4, *David Goodrich, et al. v. Fisher-Price, Inc.*, Case Number 1:16-cv-03116 (N.D. Ga. Aug. 24, 2016).

¹² *Torres et al. v. Imperial Manufactory Limited et al.*, Docket No. 7:15-cv-00444 (S.D. Tex. Oct. 23, 2015).

¹³ Mot. to Dismiss, at p. 1, *Torres et al. v. Imperial Manufactory Limited et al.*, Docket No. 7:15-cv-00444 (S.D. Tex. Oct. 23, 2015).

131. The Company was on notice of the more than 30 babies who died and at least 700 other infants who suffered injuries as a result of using the Rock ‘n Play Sleeper.

132. While the Company and the Individual Defendants were aware of the risk of death and/or injury from use of the Rock ‘n Play Sleeper, the general public was kept in the dark about these serious and sometimes deadly risks associated with the Product until November 2018.

133. The Company and the Individual Defendants knew for years that the Rock ‘n Play Sleeper was inherently unsafe and that the Product defied the medical guidance and opinions of numerous pediatric experts. Despite knowing of the dangers associated with the Rock ‘n Play Sleeper, the Individual Defendants failed to provide any notice to the millions of consumers that were putting their children in danger every day.

134. In a November 23, 2018 report, in an article titled “Infant-Sleep Deaths in Focus in Fight Over Role of Consumer-Safety Agency,” *The Wall Street Journal* reported that at least 30 deaths and more than 700 injuries since 2005 have been reported in connection with inclined sleepers, with 16 deaths occurring since September 2016.

135. As news outlets and more medical professionals began to speak out against the use of the Rock ‘n Play Sleeper and describe the dangerous nature of the Product, the Company finally began issuing warnings regarding the Product.

136. On April 5, 2019, Fisher-Price and the CPSC issued a joint statement which disclosed that since 2015 ten (10) infants died while using the Rock ‘n Play Sleeper, and warned that the Product should not be used once an infant reaches three (3) months of age, or as soon as the infant learns to, or appears to be able to, roll over. Specifically, the release stated, in relevant part:

The Consumer Product Safety Commission (CPSC) and Fisher-Price warn consumers about the Fisher-Price Rock ‘n Play due to reports of death when infants roll over in the product. According to medical literature, infants typically begin rollover behaviors at 3 months. **The CPSC is aware of 10 infant deaths in the Rock ‘n Play that have occurred since 2015, after the infants rolled from their back to their stomach or side, while unrestrained. All 10 infants were 3 months or older.**

Because deaths continue to occur, CPSC is recommending consumers stop use of the product by three months of age, or as soon as an infant exhibits rollover capabilities. CPSC has previously warned consumers to use restraints in infant inclined sleep products.

Fisher-Price warns consumers to stop using the product when infants can roll over, but the reported deaths show that some consumers are still using the product when infants are capable of rolling and without using the three point harness restraint.

CPSC and Fisher-Price remind consumers to create a safe sleep environment for infants, whether using a crib, bassinet, play yard, or inclined sleeper: Never add blankets, pillows, stuffed toys, or other items to the environment and always place infants to sleep on their backs.

The commission voted to publish a finding that the health and safety of the public requires immediate notice.

(Emphasis added).

137. On the same day, Mattel issued a press release after the publication of the joint statement by the CPSC and Fisher-Price. Mattel's press release stated, in relevant part:

A child fatality is an unimaginable tragedy.

Fisher-Price has a long, proud tradition of **prioritizing safety as the cornerstone of our mission**. Generations of parents have trusted us for almost 90 years to provide safe products for their children. We are there with you from the moment you bring your child home and take our responsibility for product safety very seriously.

Today, the Consumer Product Safety Commission (CPSC) and Fisher-Price have jointly issued an alert warning parents and caregivers to discontinue use of the Rock 'n Play Sleeper when infants begin to roll over. **To ensure a safe sleep environment for infants, we remind parents and caregivers to follow all safety warnings included with the product: always use the provided restraints, always place infants on their backs to sleep, and make sure that no pillows, blankets or extra padding are placed in the Rock 'n Play Sleeper. The Rock 'n Play Sleeper meets all applicable safety standards, including those of the international standards organization, known as ASTM International, and is certified by the Juvenile Products Manufacturers Association (JPMA).**

Fisher-Price and every one of our employees take the responsibility of being part of your family seriously, and we are committed to earning that trust every day.

(Emphasis added).

138. On April 8, 2019, Consumer Reports published an article entitled *Fisher-Price Rock ‘n Play Sleeper Should Be Recalled, Consumer Reports Says* (the “Consumer Reports Article”). According to the Consumer Reports Article, an investigation conducted by Consumer Reports found that the Rock ‘n Play Sleeper is associated with the fatality of at least 32 infants.

139. As noted by the Consumer Reports Article, the Rock ‘n Play Sleeper “has not been recalled by Fisher-Price, part of the children’s products giant Mattel, which had about \$4.5 billion in sales in 2018. The deaths have prompted only warnings from the company and the CPSC, which does not have a mandatory safety standard for infant inclined sleep products.” Further, the Consumer Reports Article notes that “the number of incidents associated with the Rock ‘n Play Sleeper, combined with long-standing expert medical advice that babies should sleep on firm, flat surfaces, raises serious safety concerns about the product.”¹⁴

140. The next day, on April 9, 2019, the AAP issued a press release calling on the CPSC to recall the Rock ‘n Play Sleeper and urging parents to stop using the Rock ‘n Play Sleeper. Specifically, the AAP stated, in relevant part:

AAP urges parents to stop using the product immediately. Stores should remove the Rock ‘n Play Sleeper from their shelves. **A warning issued**

¹⁴ Rachel Rabkin Peachman, *Fisher-Price Rock ‘n Play Sleeper Should Be Recalled, Consumer Reports Says*, Consumer Reports (Apr. 8, 2019), <https://www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says/>.

by the CPSC and Fisher-Price on April 5 did not go far enough to ensure safety and protect infants, according to the AAP.

“This product is deadly and should be recalled immediately,” said Kyle Yasuda, MD, FAAP, president of the American Academy of Pediatrics. **“When parents purchase a product for their baby or child, many assume that if it’s being sold in a store, it must be safe to use. Tragically, that is not the case. There is convincing evidence that the Rock ‘n Play inclined sleeper puts infants’ lives at risk, and CPSC must step up and take immediate action to remove it from stores and prevent further tragedies.”**

Last week, the CPSC and manufacturer alerted consumers to stop using the product when the infant reaches 3 months of age or is capable of rolling over, citing 10 infant deaths that occurred in the Rock ‘n Play. The Consumer Reports article, published April 8, tied a total of 32 deaths to the Rock ‘n Play, including the 10 noted in last week’s warning.

Consumer Reports concluded that these 32 deaths, between 2011 and 2018, included babies even younger than the 3-month threshold cited in the initial warning, which is alarming. The cause of death listed for some babies was asphyxia, or the inability to breathe caused by the babies’ position. **AAP urges parents of children of all ages to immediately stop using the Rock ‘n Play.**

“We cannot put any more children’s lives at risk by keeping these dangerous products on the shelves,” said Rachel Moon, MD, FAAP, chair of the AAP Task Force on SIDS. **“The Rock ‘n Play inclined sleeper should be removed from the market immediately. It does not meet the AAP’s recommendations for a safe sleep environment for any baby.** Infants should always sleep on their back, on a separate, flat and firm sleep surface without any bumpers or bedding.”

The AAP does not recommend inclined sleep products like the Rock ‘n Play, or any other products for sleep that require restraining a baby.

(Emphasis added).

C. The Recall

141. The Board and Individual Defendants were well aware of the dangers associated with the Rock ‘n Play Sleeper for years; however, the Individual Defendants continued to put sales figures and profits above the health and safety of infant users of the Rock ‘n Play Sleeper. [REDACTED]

142. Even in the face of numerous lawsuits regarding the death and injury of infants, and medical advice and news coverage on the dangers of the Rock ‘n Play Sleeper, the Individual Defendants willfully and/or recklessly failed to initiate a timely recall of the Product.

143. Alternatively, the Company and the Individual Defendants continued to manufacture, market, and sell the Rock ‘n Play Sleeper and suggest that the Product was safe for use.

144. [REDACTED]

145. [REDACTED]

146. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

147. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

148. On April 12, 2019 the Company finally issued the Recall. The terms of the Recall indicated that the Company would offer a refund for the roughly 4.7 million Rock ‘n Play Sleeper units sold. The Recall covered all models of the Rock ‘n Play Sleeper sold by the Company.¹⁵

149. The long overdue Recall was deferred for years despite a multitude of serious warnings regarding the inherent risks associated with the use of the Rock ‘n Play Sleeper that the Company and the Individual Defendants were fully apprised of and the stark dangers posed to consumers, infants, and small children every day that

¹⁵ U.S. Consumer Prod. Safety Comm’n, *Fisher-Price Recalls Rock ‘n Play Sleepers Due to Reports of Deaths*, <https://www.cpsc.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths> (last visited June 17, 2020).

the Product remained available for purchase in the marketplace or in use by families in the United States and abroad.

150. The President and CEO of Consumer Reports, Marta Tellado, reacted to the Recall by saying the following:

The Fisher-Price recall of the Rock n' Play is long overdue. Fisher-Price and the CPSC knew about deaths linked to this product for years and could have taken steps to avoid this unnecessary tragedy. It took dogged investigation and the voices of doctors, victims' families, and advocates across the country to make this recall a reality.¹⁶

151. William Wallace, Senior Policy Analyst for Consumer Reports, also reacted to the delayed Recall and indicated that he felt that Mattel misled the public regarding the safety of the Rock 'n Play Sleeper. Specifically, Mr. Wallace stated:

While we are glad to see all Rock 'n Play Sleepers recalled, Fisher-Price and its parent company Mattel misled parents and caregivers by marketing this product as safe for sleep, and they owe it to their customers to give them full refunds, rather than partial refunds or company vouchers. And that should be the case regardless of how long ago the product was bought.¹⁷

152. [REDACTED]

[REDACTED]

[REDACTED]

¹⁶ Consumer Reports, *Consumer Reports: Recall of Fisher-Price Rock 'n Play Sleeper Long Overdue, Welcome*, (Apr. 12, 2019), https://advocacy.consumerreports.org/press_release/consumer-reports-recall-of-fisher-price-rock-n-play-sleeper-long-overdue-welcome/.

¹⁷ *Id.*

153. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154. A mere week prior to the Recall, the Company continued to challenge safety concerns associated with the Product by issuing numerous false and/or misleading statements.

155. As aforementioned, on April 5, 2019, the CPSC and Fisher-Price issued a joint warning to consumers that the Rock ‘n Play Sleeper was dangerous for infants who can roll over, typically at around 3 months of age. This warning only discussed the rollover risks and did not mention the positional asphyxia dangers and other known dangers inherent in the Rock ‘n Play Sleeper. Moreover, this limited warning was provided all the while the Company and Individual Defendants were on notice of the risk of asphyxia associated with the Product.

156. Also, on April 5, 2019, Chuck Scothon, general manager of Fisher-Price, issued a statement claiming that the Rock ‘n Play Sleeper meets all applicable safety standards. Specifically, “[t]he Rock ‘n Play Sleeper meets all applicable safety standards, including those of the international standards organization, known

as ASTM International, and is certified by the Juvenile Products Manufacturers Association (JPMA).”¹⁸

157. The April 5, 2019 statements and warnings by the Company were reckless and misled consumers by providing a false impression that the Product was safe for use until the Recall was issued only a week later on April 12, 2019.

158. The title of the notice associated with the Recall is “Fisher-Price Recalls Rock ‘n Play Sleepers Due to Reports of Deaths[,]” and states as follows: “Since the 2009 product introduction, over 30 infant fatalities have occurred in Rock ‘n Play Sleepers, after the infants rolled over while unrestrained, or under other circumstances.” The Company advised, “Consumers should immediately stop using the product and contact Fisher-Price for a refund or voucher.”

159. The terms of the Recall are set forth on Mattel’s website as follows:

- If the Fisher-Price Rock ‘n Play Sleeper was originally purchased new - either by you or by a prior owner of the product - on or **after** 10/12/2018, you will receive a full cash refund. If you include your original receipt you will be reimbursed for the receipt amount including sales taxes paid. If you do not have your receipt, please write the month and year of purchase on one of the hubs you are returning, and we will determine the refund amount for you.
- If the Fisher-Price Rock ‘n Play Sleeper was originally purchased new - either by you or by a prior owner of the product

¹⁸ Mattel, *Media Statement on the U.S. Consumer Product Safety Commission-Fisher-Price® Joint Security Alert released on April 5, 2019*, (Apr. 5, 2019), <https://news.mattel.com/news/media-statement-on-the-u-s-consumer-product-safety-commission-fisher-priceR-joint-security-alert-released-on-april-5-2019>.

- **before** 10/12/2018, you will receive a voucher for a Fisher-Price product to be selected from a list of products to be provided by Fisher-Price. Your product choice will be determined by the original date of purchase of the product. To establish your date of purchase, please send in your original receipt if you have it. If you do not have your receipt, please write the month and year of your purchase on one of the hubs you are returning.

D. The Fallout

160. As a result of the severe dangers and risk of infant fatality associated with the Rock ‘n Play Sleeper, the Company is facing numerous wrongful death lawsuits, consumer lawsuits, and product liability lawsuits (collectively, the “Rock ‘n Play Lawsuits”).

161. The Company’s Form 10-Q for the period ending March 31, 2019, filed with the SEC on April 26, 2019 (“1Q 2019 Form 10-Q”), states the following about class action litigation related to the Rock ‘n Play Sleeper:

Class Action Litigation Related to the Fisher-Price Rock ‘n Play Sleeper

Purported class action lawsuits against Fisher-Price, Inc. and Mattel, Inc. have been filed in the United States District Courts for the Western District of New York (*Drover-Mundy, et. al. v. Fisher-Price, Inc., et al.*, filed April 18, 2019, and *Mulvey v. Fisher-Price, Inc., et al.*, filed April 19, 2019), the District of New Jersey (*Kimmel v. Fisher-Price, Inc., et al.*, filed April 11, 2019), and the Central District of California (*Black v. Mattel, Inc., et al.*, filed April 23, 2019). The lawsuits assert claims for false advertising, negligent product design, breach of warranty, fraud, and other claims in connection with the marketing and sale of the Fisher-Price Rock ‘n Play Sleeper (the "Sleeper"). In general, the lawsuits allege that the Sleeper should not have been marketed and sold as safe and fit for prolonged and overnight sleep for infants. The lawsuits propose consumer classes comprised of those who purchased the Sleeper as marketed as safe for prolonged and overnight sleep,

and/or a class of all children who sustained an injury or death due to the alleged defective design of the Sleeper, and their parents.

The lawsuits purport to certify classes nationwide and in particular states, and seek unspecified compensatory damages, punitive damages, statutory damages, restitution, disgorgement, attorneys' fees, costs, interest, declaratory relief, and/or injunctive relief. Mattel believes that the allegations in the lawsuits are without merit and intends to vigorously defend against them. A reasonable estimate of the amount of any possible loss or range of loss cannot be made at this time.

A fifth purported class action seeking to certify a consumer class, and seeking similar remedies, has been threatened against Fisher-Price and Mattel but has not yet been filed.

162. The 1Q 2019 Form 10-Q includes the following Subsequent Event disclosure:

On April 12, 2019, Mattel announced a voluntary recall of the *Fisher-Price* Rock 'n Play Sleeper. During the first quarter of 2019, Mattel recorded a reduction to net sales for estimated retailer returns of \$5.4 million and a \$21.9 million charge to cost of sales for the affected inventory, consumer remuneration obligations, and other recall-related costs, resulting in a total reduction to gross profit of \$27.3 million. Recall charges were based on estimates associated with the expected levels of affected product at retail and historical consumer response rates.

163. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

164. According to a *MarketWatch* article, dated April 16, 2019, UBS analysts estimate that the Recall could cost the Company between \$40 million to \$60 million as a result of the cash and vouchers disbursed to consumers, which does not account for litigation related costs, lost inventory and other costs incurred as a result of the Recall.

165. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

166. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

167. Additionally, during Mattel’s first quarter 2019 earnings call on April 26, 2019, Defendant Kreiz addressed the Recall and noted that the Company’s infant, toddler and preschool category was down 11%, stating:

The category [infant, toddler and preschool] was further impacted by the expected lower sales for some of our partner brands. As you know, Fisher-Price announced a voluntary recall of its Rock ‘n Play Sleeper, working in partnership with the Consumer Product Safety Commission. I want to emphasize that Mattel has always held the safety of children as its highest priority, and we take these matters very seriously. Fisher-Price has a long proud heritage of prioritizing safety as its mission, and we'll certainly continue that tradition.

168. Defendant Euteneuer also commented on the Recall during the first quarter 2019 earnings call, stating:

As Ynon mentioned, Fisher-Price recently announced a voluntary recall of the Rock ‘n Play Sleeper, which was conducted in partnership with the Consumer Product Safety Commission.

The estimated total impact of the voluntary recall on our operating income in the quarter was \$27 million. This consisted of a negative impact to cost of sales of \$22 million based on the impairment of our owned inventory and estimated consumer return rates and a 5 million-dollar net sales reduction related to returns from retailers. Separate from the loss of future Rock ‘n Play product sales, which I will discuss more in a few minutes, there may be additional recall-related expenses in the year, but we do not expect them to be material. Our reported gross margin was 34.8% of net sales, up 390 basis points from the 30.9% in the first quarter of 2018.

This included the negative impact of the \$27 million in estimated costs related to the voluntary recall and the benefit from the absence of the 2018 Toys “R” Us net sales reversal of \$30 million.

* * *

While we achieved higher-than-expected revenue and improved top-line momentum in the first quarter, we are not changing our full-year outlook given the vast majority of the year is still ahead of us and taking into account the estimated loss of Rock ‘n Play sales of \$30 million to \$35 million from Q2 through Q4.

169. The Company's Form 10-Q for the period ending June 30, 2019, filed with the SEC on July 26, 2019 ("2Q 2019 Form 10-Q"), states the following about class action litigation related to the Rock 'n Play Sleeper:

Litigation Related to the Fisher-Price Rock 'n Play Sleeper

Sixteen purported class action lawsuits are pending against Fisher-Price, Inc. and/or Mattel, Inc. asserting claims for false advertising, negligent product design, breach of warranty, fraud, and other claims in connection with the marketing and sale of the Fisher-Price Rock 'n Play Sleeper (the "Sleeper"). In general, the lawsuits allege that the Sleeper should not have been marketed and sold as safe and fit for prolonged and overnight sleep for infants. The class action lawsuits propose nationwide and statewide consumer classes comprised of those who purchased the Sleeper as marketed as safe for prolonged and overnight sleep, and/or a class of all children who sustained an injury or death due to the alleged defective design of the Sleeper, and their parents.

Four additional lawsuits are pending against Fisher-Price, Inc. and Mattel, Inc. alleging that a product defect in the Sleeper caused the fatalities of eight children. Additionally, Fisher-Price, Inc. and/or Mattel, Inc. have also received letters from lawyers purporting to represent additional plaintiffs who are threatening to assert similar claims.

The lawsuits seek compensatory damages, punitive damages, statutory damages, restitution, disgorgement, attorneys' fees, costs, interest, declaratory relief, and/or injunctive relief. Mattel believes that the allegations in the lawsuits are without merit and intends to vigorously defend against them. A reasonable estimate of the amount of any possible loss or range of loss cannot be made at this time.

170. Similar to the first quarter 2019 earnings call, on July 25, 2019 Defendant Kreiz noted in the Q2 2019 earnings call that the Company's "infant, toddler, and preschool category was down 11%, largely due to the expected decline

in Fisher-Price Friends and the loss of sales related to the Rock ‘n Play product recall.”

171. Similarly, during the second quarter 2019 earnings call, Defendant Euteneuer was hesitant to alter the Company’s revenue guidance, even in the face of the Recall. Defendant Euteneuer stated:

Let me now review our 2019 guidance starting with the top line. While we are encouraged by our first-half performance and we believe we are well-positioned for the second half, it is too early to change our revenue guidance for the year, especially considering the expected \$30 million to \$35 million volume loss related to our voluntary Rock ‘n Play recall.

172. According to the 2Q 2019 Form 10-Q, for the six months ended June 30, 2019, the Company recorded a charge of \$30.4 million attributable to the Rock ‘n Play Sleeper recall. The 2Q 2019 Form 10-Q states the following, in part:

Net loss for the first half of 2019 was \$291.7 million, or \$0.84 per share, as compared to a net loss of \$552.2 million, or \$1.60 per share, in the first half of 2018, primarily due to lower other selling and administrative expenses and higher gross profit. Net loss for the first half of 2019 includes the impact of approximately \$30 million related to the inclined sleeper product recalls.

173. The Company’s Form 10-Q for the period ending September 30, 2019, filed with the SEC on November 12, 2019 (“3Q 2019 Form 10-Q”), states the following about class action litigation related to the Rock ‘n Play Sleeper:

Litigation Related to the Fisher-Price Rock ‘n Play Sleeper

A number of putative class action lawsuits are pending against Fisher-Price, Inc. and/or Mattel, Inc. asserting claims for false advertising, negligent product design, breach of warranty, fraud, and other claims

in connection with the marketing and sale of the Fisher-Price Rock ‘n Play Sleeper (the “Sleeper”). In general, the lawsuits allege that the Sleeper should not have been marketed and sold as safe and fit for prolonged and overnight sleep for infants. The putative class action lawsuits propose nationwide and over 15 statewide consumer classes comprised of those who purchased the Sleeper as marketed as safe for prolonged and overnight sleep. The class actions have been consolidated before a single judge for pre-trial purposes pursuant to the federal courts’ Multi-District Litigation program.

Ten additional lawsuits are pending against Fisher-Price, Inc. and Mattel, Inc. alleging that a product defect in the Sleeper caused the fatalities of fourteen children. Additionally, Fisher-Price, Inc. and/or Mattel, Inc. have also received letters from lawyers purporting to represent additional plaintiffs who are threatening to assert similar claims.

The lawsuits seek compensatory damages, punitive damages, statutory damages, restitution, disgorgement, attorneys’ fees, costs, interest, declaratory relief, and/or injunctive relief. Mattel believes that the allegations in the lawsuits are without merit and intends to vigorously defend against them. A reasonable estimate of the amount of any possible loss or range of loss cannot be made at this time.

174. According to the 3Q 2019 Form 10-Q, for the first nine months of 2019, the Company recorded a charge “of approximately \$34 million related to the inclined sleeper product recalls.”

175. Additionally, during the third quarter 2019 earnings call on October 29, 2019, Defendant Kreiz noted the following:

Our infant, toddler, and pre-school category was down 10%, largely due to expected revenue declines in Fisher-Price Friends. Sales in Fisher-Price core, the largest component of the category continued to improve and were down less than 1%, including the 3% impact of the inclined sleeper recall. This is compared to last year’s decline of 6%.

176. Further, Defendant Euteneuer exemplified how the mindset of management, executives, and the directors of Mattel was focused solely on profit.

During the third quarter 2019 earnings call, Defendant Euteneuer stated:

As I mentioned, if you exclude the recall, we actually would be up single digits in Fisher-Price, which would have been a great report. But unfortunately, we obviously have had that recall, but we continue to strive and make some progress. If I tell you that there's a lot of indications, but what I would look at is product performance.

177. During the Company's fourth quarter 2019 earnings call, Defendant Euteneuer discussed the impacts of the Recall on the Company and stated:

The asset impairment was a non-cash charge related to the continued declining performance of our American Girl retail stores albeit at a slower rate of decline. We also incurred an additional \$3 million of expenses associated with the inclined sleeper product recalls in the quarter. For the year, we incurred \$10 million of recall related expenses in SG&A and a total of \$38 million across the P&L, before taking into consideration the \$30 million to \$35 million of revenue reduction.

Adjusted SG&A for the quarter was \$384 million, a decrease of \$9 million versus the year ago period. Structural Simplification savings were partially offset by higher merit and other in period expenses. For the year, reported SG&A was \$1.4 billion, a \$119 million decrease versus the prior year. The decrease was driven by Structural Simplification savings, lower severance and restructuring expenses, and the absence of the 2018 TRU liquidation. These were partially offset by higher incentive and merit expenses, asset impairment charges, and recall related expenses.

178. According to Mattel's Full Year and Fourth Quarter 2019 Financial Results,

Mattel Recorded an estimated impact of \$3.5 million and \$37.8 million related to inclined sleeper product recalls for the three months and year

ended December 31, 2019, respectively. Of the \$37.8 million recorded during the year ended December 31, 2019, \$5.8 million was a reduction to Net Sales for estimated retailer returns.

179. The Company's Form 10-Q for the period ending March 31, 2020, filed with the SEC on May 6, 2020 ("1Q 2020 Form 10-Q"), states the following about class action litigation related to the Rock 'n Play Sleeper:

Litigation Related to the Fisher-Price Rock 'n Play Sleeper

A number of putative class action lawsuits are pending against Fisher-Price, Inc. and/or Mattel, Inc. asserting claims for false advertising, negligent product design, breach of warranty, fraud, and other claims in connection with the marketing and sale of the Fisher-Price Rock 'n Play Sleeper (the "Sleeper"). In general, the lawsuits allege that the Sleeper should not have been marketed and sold as safe and fit for prolonged and overnight sleep for infants. The putative class action lawsuits propose nationwide and over 15 statewide consumer classes comprised of those who purchased the Sleeper as marketed as safe for prolonged and overnight sleep. The class actions have been consolidated before a single judge for pre-trial purposes pursuant to the federal courts' Multi-District Litigation program.

Thirty-one additional lawsuits are pending against Fisher-Price, Inc. and Mattel, Inc. alleging that a product defect in the Sleeper caused the fatalities of or injuries to thirty-five children. Additionally, Fisher-Price, Inc. and/or Mattel, Inc. have also received letters from lawyers purporting to represent additional plaintiffs who are threatening to assert similar claims.

The lawsuits seek compensatory damages, punitive damages, statutory damages, restitution, disgorgement, attorneys' fees, costs, interest, declaratory relief, and/or injunctive relief. Mattel believes that the allegations in the lawsuits are without merit and intends to vigorously defend against them.

A reasonable estimate of the amount of any possible loss or range

of loss cannot be made at this time.

180. According to the 1Q 2020 Form 10-Q, the “North America segment loss for the three months ended March 31, 2019 included a charge of approximately \$27 million attributable to the inclined sleeper product recalls.” Furthermore, the 1Q 2020 Form 10-Q indicated that:

Other selling and administrative expenses were \$328.7 million, or 55.3% of net sales, in the first quarter of 2020, as compared to \$297.4 million, or 43.1% of net sales, in the first quarter of 2019. The increase in other selling and administrative expenses was primarily driven by higher incentive compensation expense, employee-related costs, and expense related to the inclined sleeper product recall litigation, partially offset by the benefit of the Structural Simplification cost savings program.

181. Even after the Recall, the Product can still be found in households and daycare centers throughout the United States, continuing to endanger the health, safety, and livelihood of infants and young toddlers.

182. While the Recall signifies a large recall of products produced by the Company, this is not the first time recently that Mattel has been forced to recall a similar type of product.

183. On October 24, 2017, the Company issued a recall titled “Fisher-Price Recalls Infant Motion Seats Due to Fire Hazard.”

184. The Infant Motion Seat was designed similar to the Rock ‘n Play Sleeper and allowed for infants to be strapped into a seat which provided for an

inclined seating position. The Infant Motion Seat was recalled due to the fact that “[t]he motor housing can overheat, posing a fire hazard.”¹⁹

185. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

186. According to the recall of the Infant Motion Seat, the Company received at least 36 reports regarding overheating of the product which could, and likely did, injure infants.

187. The combination of the Recall, along with the recall of the Infant Motion Seat, indicate that Mattel’s product safety is not at the forefront of the Company’s decision making. Instead, the Company and the Individual Defendants, through their actions, have indicated that both value profits and units sold over the welfare and safety of the Product users.

DAMAGES TO MATTEL CAUSED BY THE INDIVIDUAL DEFENDANTS

188. As a direct and proximate result of the Individual Defendants’ misconduct, the Individual Defendants allowed for materially inadequate controls over the Company’s policies and practices, caused the Company to issue materially

¹⁹ U.S. Consumer Prod. Safety Comm’n, *Fisher-Price Recalls Infant Motion Seats Due to Fire Hazard*, <https://www.cpsc.gov/Recalls/2017/fisherprice-recalls-infant-motion-seats-due-to-fire-hazard> (last visited June 17, 2020).

false and misleading statements, and substantially damaged the Company's credibility, corporate image, and goodwill.

189. Mattel has expended and will continue to expend significant sums of money. Additional expenditures and damages that the Company has incurred as a result of the Individual Defendants' breaches of their fiduciary duty include:

- a. Costs incurred from compensation and benefits paid to the Individual Defendants who have breached their duties to Mattel;
- b. Costs incurred related to the Recall including, but not limited to: the loss of existing inventory, refunds to consumers who previously purchased the Rock 'n Play Sleeper, and the establishment of a call center to handle the influx of calls relating to the Recall;
- c. Litigation and settlement costs associated with lawsuits filed as a result of death or injury caused by the Rock 'n Play Sleeper; and
- d. Costs related to the Company's loss of market credibility stemming from product safety and internal control weaknesses.

190. Finally, Mattel's credibility, reputation and goodwill have likewise been damaged, and the Company remains exposed to significant potential liability going forward.

DERIVATIVE AND DEMAND REFUSED ALLEGATIONS

191. Plaintiff brings this action derivatively in the right and for the benefit of Mattel to redress injuries suffered, and to be suffered, by Mattel as a direct result of the Individual Defendants' multiple breaches of fiduciary duty.

192. Plaintiff is a shareholder of Mattel, was a shareholder of Mattel at the time of the wrongdoing alleged herein, and has been a shareholder of Mattel continuously since that time.

193. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

194. Plaintiff has continuously been a Mattel stockholder since December 29, 2016.

195. Mattel is named as a nominal defendant in this case solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have. Prosecution of this action, independent of the current Board of Directors, is in the best interests of the Company.

196. The wrongful acts complained of herein subject, and will continue to subject, Mattel to continuing harm because the adverse consequences of the actions are still in effect and ongoing.

197. The wrongful acts complained of herein were unlawfully concealed from Mattel shareholders.

198. The current Board of Mattel consists of the following nine individuals: defendants Bradley, Cisneros, Dolan, Kreiz, Laursen, Lewnes, Lynch, Ng, and Olian.

199. Boards of directors have an affirmative duty to conduct a reasonable, objective, and good faith investigation into the allegations in a stockholder litigation demand, and to determine on the basis of that investigation whether the demand's factual allegations and legal claims have merit and whether pursuing the claims in litigation would be in the company's best interests.

200. Boards that fulfill their duty to investigate a stockholder's litigation demand in a reasonable manner, objectively, and in good faith, and then act reasonably on the basis of the investigation, retain the protections of the business judgment rule's presumption that they acted independently, on a reasonably informed basis, and in good faith. Boards that fail to do so may not avail themselves of this presumption, and the stockholder's litigation demand will be deemed to have been wrongfully refused.

201. On May 31, 2019, Plaintiff issued a books and records demand pursuant to 8 Del. C. § 220. The Company made a partial production of documents on August 19, 2019 and an additional production of documents on August 30, 2019.

202. On December 2, 2019, Plaintiff's counsel sent the Board Plaintiff's Litigation Demand pursuant to Delaware law, demanding the Board to investigate

the foregoing facts and claims, and to address, remedy, and commence proceedings against the corporate fiduciary responsible for damaging Mattel. *See* Exhibit A.

203. In particular, Plaintiff's Litigation Demand explains that that the Company incurred damages and will continue to be at risk as a result of the Company's product safety issues and improper product recall practices.

204. Plaintiff demanded that independent and disinterested directors undertake an investigation of the wrongdoing detailed in the Demand.

205. Specifically, the Demand stated the following:

On behalf of the Shareholder, we hereby demand: (i) that the Board provide the Shareholder with all the pertinent information on the issues raised herein; (ii) that the Board engage entirely independent, outside investigators and give them the unfettered ability to perform a thorough investigation; (iii) that the Board formulate and implement meaningful corporate governance reforms, including mechanisms to ensure that the Company's products are safe and that the Company's products are analyzed by competent medical professionals and immediately recalled when issues arise; (iv) that the Board clawback or recoup any severance, bonus or separation payments paid to individuals who were responsible for overseeing risk management and product safety; (v) that the Board provide the Shareholder with information regarding any lawsuits or threats of lawsuits as a result of the type of conduct described herein; (vi) that the Board respond swiftly and appropriately to the findings of the investigations; and (vii) that the Board investigate the harm to the Company alleged herein and take action against the Directors and Officers to recover the damages described. Please be advised that Shareholder's counsel is ready and willing to assist the Board and any special committee that may be formed to investigate the allegations set forth herein.

206. On February 14, 2020, Defendants' counsel sent a letter responding to the Demand ("Defendants' First Response") indicating that the Board does not

intend to act upon Plaintiff's Litigation Demand within a reasonable period of time.
See Exhibit B.

207. Defendants' Counsel, through Defendants' First Response, stated that, "the Mattel Board of Directors has decided to defer taking action with respect to Mr. Kumar's demand pending resolution of the relevant litigation."

208. As aforementioned, Mattel is subject to numerous lawsuits predicated on the Rock 'n Play Sleeper involving claims of wrongful death and personal injury, as well as multidistrict litigation premised on products liability.

209. Defendants' indication that Plaintiff's Litigation Demand will be ignored until the "resolution of the relevant litigation" is unreasonable and indicates that the Board does not intend to act upon Plaintiff's Litigation Demand within a reasonable period of time. The numerosity of lawsuits and multidistrict litigation may be "pending" for years, if not longer.

210. As such, the Defendants' First Response is a wrongful refusal of Plaintiff's Litigation Demand.

211. Nevertheless, on March 2, 2020, Plaintiff's counsel responded to Defendants' First Response ("Plaintiff's Response"). *See Exhibit C.* Plaintiff's Response explained:

Here, the Board is attempting to defer action on Kumar's Demand based on pending litigation that the Board deems "similar to [allegations] set forth in [Kumar's] letter." In fact, Kumar's Demand as a shareholder of Mattel and the pendency and outcome of the

pending litigation based on alleged tortious conduct of the Company are disparate. For example: the claims and allegations of the pending litigation would not be complained of within a shareholder derivative action, the Mattel directors and officers are not named defendants in the pending litigation, breach of fiduciary duty claims are not raised in the pending litigation, and corrective and remedial corporate governance is not demanded and is unlikely to be sufficiently included in any resolution to the pending litigation.

Pursuant to Delaware law, corporations are not permitted to stand neutral with regards to a shareholder's demand; instead, corporations must affirmatively support or refuse a shareholder's demand. *See, e.g., Kaplan v. Peat, Marwick, Mitchell & Co.*, 540 A.2d 726, 731 (Del. 1988). Additionally, a board in receipt of a shareholder's demand "must investigate" the alleged wrongdoing and decide on a course of action. *MacCumber v. Austin*, 2004 WL 1745751 at *3 (N.D. Ill. Aug. 2, 2014). The decision to defer Kumar's Demand indicates that the Board intends to remain neutral. Further, the Board's decision was apparently made without any investigation whatsoever.

212. The March 2, 2020 letter asked for a definitive response from the Board to Plaintiff's Litigation Demand. Specifically, Plaintiff's counsel requested the following:

Accordingly, Kumar incorporates, as if set forth at length herein, the contents of his Demand dated December 2, 2019. If the Shareholder does not receive a response from the Board of Directors within ten (10) days of receipt of this letter affirmatively supporting or refusing his Demand, Kumar will consider his Demand refused, and proceed accordingly.

213. On April 9, 2020, Defendants' counsel sent a reply letter to Plaintiff's Response ("Defendants' Second Response" and, collectively with Defendants' Response, the "Defendants' Responses") again indicating that the Board does not

intend to act upon Plaintiff's Litigation Demand within a reasonable period of time.

See Exhibit D. Defendants' Second Response states the following, in part:

Your letter disputes the Board's decision, explained in my February 14, 2020 letter to you, to defer taking action with respect to Mr. Kumar's demand relating to the Rock 'n Play Sleeper, and states that "[i]f the Shareholder does not receive a response from the Board of Directors . . . affirmatively supporting or refusing his Demand, Mr. Kumar will consider his demand refused, and proceed accordingly."

After considering your March 2 letter, it is the Board's judgment to continue to defer taking action with respect to Mr. Kumar's demand for reasons set forth in my February 14 letter to you. Moreover, deferral is all the more appropriate at this time, when Mattel's management and Board must be focused on Mattel's response to the worldwide pandemic.

214. Defendants' Responses indicate that the Board does not intend to take any action upon Plaintiff's Litigation Demand within a reasonable period of time.

215. Instead, the Board indicates that the Board reincorporates Defendants' Response, which indicated that "the Mattel Board of Directors has decided to defer taking action with respect to Mr. Kumar's demand pending resolution of the relevant litigation."

216. As aforementioned, the Company is subject to numerous lawsuits, including multidistrict litigation, which will likely be "pending" for years, if not longer.

217. Defendants' Responses are unreasonable as the Board determined to ignore Plaintiff's Litigation Demand for an unreasonable, and undeterminable, period of time.

218. The Board's statements through Defendants' Responses demonstrates the Board's unwillingness to act in good faith and further unwillingness to take action.

219. The Defendants' Responses demonstrate that the Board failed to perform any due diligence with regard to the demands made in Plaintiff's Litigation Demand. As such, a reasonable doubt exists as to whether the Board is acting in good faith and with due care while responding to Plaintiff's Litigation Demand.

220. Additionally, Defendants' Responses suggest that **no** action will be taken upon Plaintiff's Litigation Demand, which further indicates that the Board is not acting in good faith.

221. The Defendants' Responses are unwarranted and further indicate a lack of good faith. The Individual Defendants' could have established a litigation committee to evaluate, comment on, and fully respond to Plaintiff's Litigation Demand. Instead, the Board, without any due diligence, simply dismissed Plaintiff's Litigation Demand and intends to ignore Plaintiff's Litigation Demand indefinitely.

222. The Board's wrongful refusal of Plaintiff's Litigation Demand is unreasonable and improper, demonstrating the Board's lack of good faith.

223. The Board failed to act in an independent matter in refusing to take action regarding Plaintiff's Litigation Demand. Further, the Board failed to conduct a reasonable inquiry and failed to act with the honest belief that refusing Plaintiff's Litigation Demand was in the best interest of the Company.

224. As such, the Board has failed to fulfill its duty to investigate Plaintiff's Litigation Demand reasonably, objectively, and in good faith. Therefore, the Board's decision to refuse Plaintiff's Litigation Demand is not protected by the business judgment rule.

225. Therefore, Plaintiff reasonably believes that the Board's refusal is not a valid exercise of business judgment and that Plaintiff should be permitted to proceed and to prosecute this action derivatively on behalf of the Company.

226. Plaintiff has not made any demand on the other stockholders of Mattel to institute this action since such demand would be futile and useless for at the least the following reasons:

- a. Mattel is a publicly held company with over 347 million shares of common stock outstanding and thousands of stockholders;
- b. making a demand on such a number of shareholders would be impossible for Plaintiff, who has no way of finding out the names, addresses, or phone numbers of stockholders; and

- c. making a demand on stockholders would force Plaintiff to incur excessive expenses, assuming all stockholders could be individually identified.

CAUSES OF ACTION

COUNT I

(Against Bradley, Cisneros, Dolan, Laursen, Lewnes, Lynch, Ng, Olian, and Prabhu (the “Director Defendants”) for Breach of Fiduciary Duty)

227. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

228. The Director Defendants owed and owe Mattel fiduciary obligations, including the fiduciary duties of loyalty, care and good faith.

229. The Director Defendants breached their duties of loyalty, care, and good faith by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) failing to adequately determine the safety of the Rock ‘n Play Sleeper; (iii) failing to exercise their oversight duties by not monitoring the Company’s compliance with its own procedures and federal and state regulations; (iv) making and/or causing the Company to make false and misleading statements and/or material omissions; (v) failing to adequately consider and apply generally acceptable medical opinions and guidance in relation to infant and toddler sleep positioning and the sleeper products manufactured, marketed, and sold by the Company and its subsidiaries; (vi) failing to proactively seek the opinion and advice

of medical expert(s) in relation to the Company's sleeping products; (vii) willfully and intentionally introducing a product into the marketplace while knowing of or willfully disregarding the Product's inherent safety deficiencies; (viii) failing to have a sufficient incident response plan to immediately address the dangers associated with the Rock 'n Play Sleeper; (ix) consciously disregarding, delaying, and failing to ensure that the Company notified the general public upon discovery that the Rock 'n Play Sleeper was inherently dangerous and may lead to death; (x) failing to timely disclose the Company's internal findings regarding the dangerousness of the Rock 'n Play Sleeper; and (xi) allowing the Company to violate state and federal laws and regulations.

230. The Director Defendants had actual or constructive knowledge that the Company was engaging in the practices and acts as set forth herein.

231. The Director Defendants had actual or constructive knowledge that the Company failed to adequately address the issues surrounding the Rock 'n Play Sleeper and issued materially false and misleading statements, or permitted unsubstantiated and misleading statements to be issued, to the general public and regulators. Further, the Director Defendants failed to correct the Company's public statements and representations.

232. The Director Defendants had actual or constructive knowledge that the Company's internal controls were not adequately maintained to prevent, address, and remediate the issues surrounding the Rock 'n Play Sleeper and the Recall.

233. As a direct and proximate result of the breaches of fiduciary obligations by the Director Defendants, Mattel has sustained and continues to sustain significant damages, as alleged herein. As a result of the misconduct alleged herein, the Director Defendants are liable to the Company.

234. The Director Defendants' misconduct – through both their actions and conscious inaction – cannot be exculpated under Delaware or other applicable law as it implicates bad faith and a breach of the duty of loyalty.

235. Plaintiff, on behalf of Mattel, has no adequate remedy at law.

COUNT II

(Against Defendant Kreiz for Breach of Fiduciary Duty)

236. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

237. Defendant Kreiz owed and owes Mattel fiduciary obligations, including the fiduciary duties of loyalty, care and good faith.

238. Defendant Kreiz breached his fiduciary duties of loyalty, care, and good faith by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) failing to adequately determine the safety of the Rock 'n Play

Sleeper; (iii) failing to exercise his oversight duties by not monitoring the Company's compliance with its own procedures and federal and state regulations; (iv) making and/or causing the Company to make false and misleading statements and/or material omissions; (v) failing to adequately consider and apply generally acceptable medical opinions and guidance in relation to infant and toddler sleep positioning and the sleeper products manufactured, marketed, and sold by the Company and its subsidiaries; (vi) failing to proactively seek the opinion and advice of medical expert(s) in relation to the Company's sleeping products; (vii) willfully and intentionally introducing a product into the marketplace while knowing of or willfully disregarding the Product's inherent safety deficiencies; (viii) failing to have a sufficient incident response plan to immediately address the dangers associated with the Rock 'n Play Sleeper; (ix) consciously disregarding, delaying, and failing to ensure that the Company notified the general public upon discovery that the Rock 'n Play Sleeper was inherently dangerous and may lead to death; (x) failing to timely disclose the Company's internal findings regarding the dangerousness of the Rock 'n Play Sleeper; and (xi) allowing the Company to violate state and federal laws and regulations.

239. Defendant Kreiz had actual or constructive knowledge that the Company was engaging in the practices and acts as set forth herein.

240. Defendant Kreiz had actual or constructive knowledge that the Company failed to adequately address the issues surrounding the Rock ‘n Play Sleeper and issued materially false and misleading statements, or permitted unsubstantiated and misleading statements to be issued, to the general public and regulators. Further, Kreiz failed to correct the Company’s public statements and representations.

241. Defendant Kreiz had actual or constructive knowledge that the Company’s internal controls were not adequately maintained to prevent, address, and remediate the issues surrounding the Rock ‘n Play Sleeper and the Recall.

242. As a direct and proximate result of the breaches of fiduciary obligations by Kreiz, Mattel has sustained and continues to sustain significant damages, as alleged herein. As a result of the misconduct alleged herein, Kreiz is liable to the Company.

243. Kreiz’s misconduct – through both his actions and conscious inaction – cannot be exculpated under Delaware or other applicable law.

Plaintiff, on behalf of Mattel, has no adequate remedy at law.

COUNT III

(Against Defendant Euteneuer for Breach of Fiduciary Duty)

244. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

245. Defendant Euteneuer owed and owes Mattel fiduciary obligations, including the fiduciary duties of loyalty, care and good faith.

246. Defendant Euteneuer breached his fiduciary duties of loyalty, care, and good faith by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) failing to adequately determine the safety of the Rock ‘n Play Sleeper; (iii) failing to exercise his oversight duties by not monitoring the Company’s compliance with its own procedures and federal and state regulations; (iv) making and/or causing the Company to make false and misleading statements and/or material omissions; (v) failing to adequately consider and apply generally acceptable medical opinions and guidance in relation to infant and toddler sleep positioning and the sleeper products manufactured, marketed, and sold by the Company and its subsidiaries; (vi) failing to proactively seek the opinion and advice of medical expert(s) in relation to the Company’s sleeping products; (vii) willfully and intentionally introducing a product into the marketplace while knowing of or willfully disregarding the Product’s inherent safety deficiencies; (viii) failing to have a sufficient incident response plan to immediately address the dangers associated with the Rock ‘n Play Sleeper; (ix) consciously disregarding, delaying, and failing to ensure that the Company notified the general public upon discovery that the Rock ‘n Play Sleeper was inherently dangerous and may lead to death; (x) failing to timely disclose the Company’s internal findings regarding the dangerousness of the Rock

'n Play Sleeper; and (xi) allowing the Company to violate state and federal laws and regulations.

247. Defendant Euteneuer had actual or constructive knowledge that the Company was engaging in the practices and acts as set forth herein.

248. Defendant Euteneuer had actual or constructive knowledge that the Company failed to adequately address the issues surrounding the Rock 'n Play Sleeper and issued materially false and misleading statements, or permitted unsubstantiated and misleading statements to be issued, to the general public and regulators. Further, Euteneuer failed to correct the Company's public statements and representations.

249. Defendant Euteneuer had actual or constructive knowledge that the Company's internal controls were not adequately maintained to prevent, address, and remediate the issues surrounding the Rock 'n Play Sleeper and the Recall.

250. As a direct and proximate result of the breaches of fiduciary obligations by Euteneuer, Mattel has sustained and continues to sustain significant damages, as alleged herein. As a result of the misconduct alleged herein, Euteneuer is liable to the Company.

251. Euteneuer's misconduct – through both his actions and conscious inaction – cannot be exculpated under Delaware or other applicable law.

252. Plaintiff, on behalf of Mattel, has no adequate remedy at law.

COUNT IV

(Against Defendant Dickson for Breach of Fiduciary Duty)

253. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

254. Defendant Dickson owed and owes Mattel fiduciary obligations, including the fiduciary duties of loyalty, care and good faith.

255. Dickson breached his fiduciary duties of loyalty, care, and good faith by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) failing to adequately determine the safety of the Rock 'n Play Sleeper; (iii) failing to exercise his oversight duties by not monitoring the Company's compliance with its own procedures and federal and state regulations; (iv) making and/or causing the Company to make false and misleading statements and/or material omissions; (v) failing to adequately consider and apply generally acceptable medical opinions and guidance in relation to infant and toddler sleep positioning and the sleeper products manufactured, marketed, and sold by the Company and its subsidiaries; (vi) failing to proactively seek the opinion and advice of medical expert(s) in relation to the Company's sleeping products; (vii) willfully and intentionally introducing a product into the marketplace while knowing of or willfully disregarding the Product's inherent safety deficiencies; (viii) failing to have a sufficient incident response plan to immediately address the dangers associated

with the Rock ‘n Play Sleeper; (ix) consciously disregarding, delaying, and failing to ensure that the Company notified the general public upon discovery that the Rock ‘n Play Sleeper was inherently dangerous and may lead to death; (x) failing to timely disclose the Company’s internal findings regarding the dangerousness of the Rock ‘n Play Sleeper; and (xi) allowing the Company to violate state and federal laws and regulations.

256. Defendant Dickson had actual or constructive knowledge that the Company was engaging in the practices and acts as set forth herein.

257. Defendant Dickson had actual or constructive knowledge that the Company failed to adequately address the issues surrounding the Rock ‘n Play Sleeper and issued materially false and misleading statements, or permitted unsubstantiated and misleading statements to be issued, to the general public and regulators. Further, Dickson failed to correct the Company’s public statements and representations.

258. Defendant Dickson had actual or constructive knowledge that the Company’s internal controls were not adequately maintained to prevent, address, and remediate the issues surrounding the Rock ‘n Play Sleeper and the Recall.

259. As a direct and proximate result of the breaches of fiduciary obligations by Dickson, Mattel has sustained and continues to sustain significant damages, as

alleged herein. As a result of the misconduct alleged herein, Dickson is liable to the Company.

260. Dickson's misconduct – through both his actions and conscious inaction – cannot be exculpated under Delaware or other applicable law.

261. Plaintiff, on behalf of Mattel, has no adequate remedy at law.

COUNT V

(Against Director Defendants for Unjust Enrichment)

262. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

263. Through the wrongful course of conduct and actions complained of herein, the Director Defendants were unjustly enriched at the expense of, and to the detriment of, Mattel. The wrongful conduct was continuous and resulted in ongoing harm to the Company. The Director Defendants were unjustly enriched by receiving compensation and director remuneration.

264. Plaintiff, as a shareholder of Mattel, seeks restitution from the Director Defendants, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by the Director Defendants from their wrongful course of conduct and fiduciary breaches.

265. By reason of the foregoing, Mattel has sustained and continues to sustain damages.

COUNT VI

(Against Kreiz for Unjust Enrichment)

266. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

267. Through the wrongful course of conduct and actions complained of herein, Kreiz was unjustly enriched at the expense of, and to the detriment of, Mattel. The wrongful conduct was continuous and resulted in ongoing harm to the Company. Kreiz was unjustly enriched by receiving executive.

268. Plaintiff, as a shareholder of Mattel, seeks restitution from Kreiz, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by Kreiz for his wrongful course of conduct and fiduciary breaches.

269. By reason of the foregoing, Mattel has sustained and continues to sustain damages.

COUNT VII

(Against Euteneuer for Unjust Enrichment)

270. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

271. Through the wrongful course of conduct and actions complained of herein, Euteneuer was unjustly enriched at the expense of, and to the detriment

of, Mattel. The wrongful conduct was continuous and resulted in ongoing harm to the Company. Euteneuer was unjustly enriched by receiving executive compensation.

272. Plaintiff, as a shareholder of Mattel, seeks restitution from Euteneuer, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by Euteneuer for his wrongful course of conduct and fiduciary breaches.

273. By reason of the foregoing, Mattel has sustained and continues to sustain damages.

COUNT VIII

(Against Dickson for Unjust Enrichment)

274. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as though fully set forth herein.

275. Through the wrongful course of conduct and actions complained of herein, Dickson was unjustly enriched at the expense of, and to the detriment of, Mattel. The wrongful conduct was continuous and resulted in ongoing harm to the Company. Dickson was unjustly enriched pursuant to receiving executive compensation.

276. Plaintiff, as a shareholder of Mattel, seeks restitution from Dickson, and seeks an order of this Court disgorging all profits, benefits, and other

compensation obtained by Dickson for his wrongful course of conduct and fiduciary breaches.

277. By reason of the foregoing, Mattel has sustained and continues to sustain damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under the law and demand was wrongfully refused;

B. Directing Individual Defendants to account to Mattel for all damages sustained or to be sustained by the Company by reason of the wrongs alleged herein;

C. Directing Mattel to take all necessary actions to reform its corporate governance and internal procedures to comply with applicable laws and protect the Company and its shareholders from a recurrence of the events described herein, including, but not limited to, a shareholder vote for amendments to Mattel's By-Laws or Articles of Incorporation, appointing or creating a Board-level committee and executive officer position charged with oversight, and taking such other action as may be necessary to place before shareholders for a vote on corporate governance policies;

D. Awarding to Mattel restitution from the Individual Defendants and ordering disgorgement of all profits, benefits and other compensation obtained by the Individual Defendants;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees and expenses; and

F. Granting such other and further relief as the Court may deem just and proper.

Dated: July 7, 2020

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Respectfully submitted,

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