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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE MATTEL, INC. SECURITIES
LITIGATION

Case No. 2:19-cv-10860-MCS-PLA

**ORDER (1) GRANTING MOTION
FOR FINAL APPROVAL OF
SETTLEMENT AND PLAN OF
ALLOCATION (ECF NO. 147);
(2) GRANTING IN PART AND
DENYING IN PART MOTION FOR
ATTORNEYS’ FEES AND
LITIGATION EXPENSES (ECF NO.
148); AND (3) GRANTING IN PART
AND DENYING IN PART MOTION
FOR LEAVE TO FILE
SUPPLEMENTAL AUTHORITY
(ECF NO. 156)**

Lead Plaintiffs DeKalb County Employees Retirement System and New Orleans Employees’ Retirement System move for final approval of a class action settlement. (Mot. for Final Approval, ECF No. 147.) Class Counsel moves for an award of attorneys’ fees and litigation expenses. (Mot. for Fees, ECF No. 148.) Defendants Mattel, Inc., Margaret H. Georgiadis, Joseph J. Euteneuer, and Kevin Farr submitted a statement notifying the Court that they do not oppose the motion for final approval and that they take no position on the fee motion. (Statement, ECF No. 150.) One class member submitted written objections. (Obj., ECF No. 151.) Lead Plaintiffs and Class

1 Counsel submitted a reply in support of the motions. (Reply, ECF No. 152.) The Court
2 heard oral argument on May 2, 2022. (Mins., ECF No. 155.) After the hearing, Class
3 Counsel submitted a motion for leave to file supplemental authority supporting the fee
4 motion. (Mot. for Leave, ECF No. 156.) The Court deems the motion for leave suitable
5 for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

6 **I. BACKGROUND**

7 This is a securities class action stemming from a purported “cover-up of known,
8 material misstatements in Mattel’s financial results and known, severe weaknesses in
9 its internal controls.” (Am. Compl. ¶ 1, ECF No. 34; *see* MTD Order 2–8, ECF No. 74
10 (providing a detailed summary of the allegations and claims).) The Court appointed
11 DeKalb and New Orleans as Lead Plaintiffs, approved their selection of Bernstein
12 Litowitz Berger & Grossmann LLP as Lead Counsel, and consolidated related actions.
13 (*See* Order Appointing Lead Pls., ECF No. 27.) The Court certified a class defined as
14 “[a]ll persons and entities who purchased or otherwise acquired the common stock of
15 Mattel, Inc. from August 2, 2017 to August 8, 2019, inclusive, and who were damaged
16 thereby” (the “Class”), and a subclass defined as “[a]ll persons and entities who
17 purchased or otherwise acquired the common stock of Mattel, Inc. from February 27,
18 2018 to August 8, 2019, inclusive, and who were damaged thereby” (the “PwC
19 Subclass”), with appropriate exclusions. The Court appointed Lead Plaintiffs as Class
20 Representatives and Bernstein as Class Counsel. (Class Cert. Order 15, ECF No. 137.)

21 The parties reached an agreement on a classwide settlement. In exchange for a
22 release of the class members’ claims, Defendants agreed to pay \$98 million into an
23 interest-bearing escrow account, from which proceeds will be distributed to class
24 members who submit valid claim forms. (*See* Stip., ECF No. 143-1.) The Court granted
25 preliminary approval of the settlement. (Preliminary Approval Order, ECF No. 146.)

26 The settlement administrator mailed 194,424 notice packets to potential class
27 members and received 12 requests for exclusion. (Segura Decl. ¶¶ 2, 4, ECF No. 153-
28 1.) One class member filed a timely objection to the settlement. (Obj.)

1 **II. MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

2 Class Counsel seeks leave to file supplemental authorities in support of the fee
3 motion alerting the Court to a fee decision issued after briefing on the fee motion
4 concluded and providing documents Class Counsel referenced at oral argument. (Mot.
5 for Leave 2.) The Court has considered the motion on its merits despite its procedural
6 defects. *E.g.*, C.D. Cal. Rs. 6-1, 7-3 to -5.

7 The Court grants the motion insofar as Class Counsel requests that the Court
8 review fee award–related documents attached to the motion. However, the Court
9 declines to consider the arguments presented in the memorandum attached to the
10 motion. (Notice of Suppl. Authority, ECF No. 156-1.) *See, e.g., Alfred v. Walt Disney*
11 *Co.*, No. CV 18-8074-CBM-(ASx), 2021 U.S. Dist. LEXIS 253299, at *2 (C.D. Cal.
12 Dec. 16, 2021) (granting leave to file supplemental authority but declining to consider
13 parties’ discussion of the authority).

14 **III. MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF**
15 **ALLOCATION**

16 In determining whether a proposed class action settlement is “fair, reasonable,
17 and adequate,” this Court may consider some or all of the following factors: (1) the
18 strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of
19 further litigation; (3) the risk of maintaining class action status throughout trial; (4) the
20 amount offered in settlement; (5) the extent of discovery completed and the stage of the
21 proceedings; (6) the experience and views of counsel; (7) the presence of a
22 governmental participant; and (8) the reaction of the class members to the proposed
23 settlement. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009).

24 In its preliminary approval order, the Court found that the settlement was fair,
25 adequate, and reasonable. (Preliminary Approval Order 3–5, 7.) The Court incorporates
26 and adopts its prior analysis here.

27 The Court briefly addresses the objection to the settlement submitted by James J.
28 Hayes. Mr. Hayes contends the settlement is not fair, reasonable, or adequate because

1 it does not compensate class members for all of their losses and does not provide
2 recovery to options holders, who are not members of the class. (Obj. 1–2.) The Court
3 overrules the objection. “It is well-settled law that a cash settlement amounting to only
4 a fraction of the potential recovery will not per se render the settlement inadequate or
5 unfair.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982).
6 The settlement provides a recovery of 17.8% of Lead Plaintiffs’ calculation of
7 Defendants’ maximum potential exposure, which is an excellent outcome for a
8 securities case. (Preliminary Approval Order 5.) Moreover, before the parties reached
9 settlement, the Court certified a class of stock purchasers that did not include options
10 purchasers. (Class Cert. Order 15.) The settlement is not defective for limiting itself to
11 the certified class, and the options purchasers remain free to pursue any securities claims
12 they have related to the purported misstatements.

13 The Court concludes the settlement is fair, reasonable, and adequate and grants
14 final approval. The Court orders as follows:

15 1. This Order approving the proposed Plan of Allocation incorporates by
16 reference the definitions in the Stipulation and Agreement of Settlement dated
17 November 23, 2021 (ECF No. 143-1), and all capitalized terms not otherwise defined
18 herein shall have the same meanings as set forth in the Stipulation.

19 2. The Court has jurisdiction to enter this Order approving the proposed Plan
20 of Allocation, and over the subject matter of the Action and all parties to the Action,
21 including all Class Members.

22 3. Notice of Lead Plaintiffs’ motion for approval of the proposed Plan of
23 Allocation was given to all Class Members who could be identified with reasonable
24 effort. The form and method of notifying the Class of the motion for approval of the
25 proposed Plan of Allocation satisfied the requirements of Rule 23 of the Federal Rules
26 of Civil Procedure, the United States Constitution (including the Due Process Clause),
27 the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended,
28 and all other applicable law and rules, constituted the best notice practicable under the

1 circumstances, and constituted due and sufficient notice to all persons and entities
2 entitled thereto.

3 4. Copies of the Notice, which included the Plan of Allocation, were mailed
4 to over 194,000 potential Class Members and nominees. One objection to the Plan of
5 Allocation, from objector James J. Hayes, was received, and that objection is hereby
6 overruled.

7 5. The Court hereby finds and concludes that the formula for the calculation
8 of the claims of Claimants as set forth in the Plan of Allocation mailed to Class
9 Members provides a fair and reasonable basis upon which to allocate the proceeds of
10 the Net Settlement Fund among Class Members with due consideration having been
11 given to administrative convenience and necessity.

12 6. The Court hereby finds and concludes that the Plan of Allocation is, in all
13 respects, fair and reasonable to the Class.

14 **IV. MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

15 **A. Litigation Expenses**

16 The Private Securities Litigation Reform Act allows a class representative to
17 recover "reasonable costs and expenses (including lost wages) directly relating to the
18 representation of the class." 15 U.S.C. § 78u-4(a)(4).

19 Lead Plaintiffs seek reimbursement of the value of the time their employees
20 devoted to the action by communicating with Class Counsel, reviewing pleadings and
21 briefs, assisting in the production of documents and discovery responses, preparing for
22 depositions and being deposed, attending mediation, and consulting with counsel.
23 (Robertson Decl. ¶¶ 5, 10, ECF No. 149-1; Evans Decl. ¶¶ 5, 10, ECF No. 149-2.) The
24 Court finds the request reasonable and awards DeKalb \$5,515.00 and New Orleans
25 \$3,100.00 from the settlement fund as reimbursement for costs and expenses directly
26 related to their representation of the class.

27 Class Counsel requests reimbursement of litigation expenses of \$1,139,330.73,
28 which consist of expert fees, mediation fees, research costs, document management

1 costs, telephone and photocopying expenses, and other recoverable expenses. (Rizio-
2 Hamilton Decl. ¶¶ 115–22, ECF No. 149; Rizio-Hamilton Decl. ¶¶ 11–12 & Ex. 4, ECF
3 No. 149-5; Walker Decl. ¶¶ 9–11 & Ex. 4, ECF No. 149-6.) The Court deems these
4 litigation expenses were necessarily incurred to litigate the action and are fair and
5 reasonable. The Court awards Class Counsel \$1,139,330.73 from the settlement fund as
6 reimbursement for litigation expenses.

7 **B. Attorneys’ Fees**

8 “In a certified class action, the court may award reasonable attorney’s fees”
9 Fed. R. Civ. P. 23(h). “Where a settlement produces a common fund for the benefit of
10 the entire class, courts have discretion to employ either the lodestar method or the
11 percentage-of-recovery method.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
12 935, 942 (9th Cir. 2011). But this “discretion must be exercised so as to achieve a
13 reasonable result.” *Id.*

14 Class Counsel requests a fee award of 25% of the common fund. (Mot. for Fees
15 6–7.) Courts in the Ninth Circuit “typically calculate 25% of the fund as the
16 ‘benchmark’ for a reasonable fee award.” *In re Bluetooth Headset*, 654 F.3d at 942.
17 However, the benchmark is only a “helpful starting point,” *In re Online DVD-Rental*
18 *Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015) (internal quotation marks omitted),
19 and courts should depart from this benchmark or employ the lodestar method where a
20 benchmark award would “yield windfall profits for class counsel in light of the hours
21 spent on the case,” *In re Bluetooth Headset*, 654 F.3d at 942. Factors courts consider in
22 assessing the reasonableness of a percentage-of-recovery award include:

23 the extent to which class counsel “achieved exceptional
24 results for the class,” whether the case was risky for class
25 counsel, whether counsel’s performance “generated benefits
26 beyond the cash settlement fund,” the market rate for the
27 particular field of law (in some circumstances), the burdens
28 class counsel experienced while litigating the case (e.g., cost,

1 duration, foregoing other work), and whether the case was
2 handled on a contingency basis.

3 *In re Online DVD-Rental*, 779 F.3d at 954–55 (quoting *Vizcaino v. Microsoft Corp.*,
4 290 F.3d 1043, 1048–50 (9th Cir. 2002)).

5 Considering these factors, the Court determines that an award of 25% of the
6 common fund would provide an unreasonable windfall to Class Counsel. The Court
7 finds persuasive Class Counsel’s arguments and evidence concerning the excellent
8 value of the results achieved through settlement, the riskiness and complexity of the
9 litigation, the skill and quality of counsel’s work, the contingent nature of the fee, and
10 the significant financial burdens counsel carried during the course of litigation. (Mot.
11 for Fees 8–13; Rizio-Hamilton Decl. ¶¶ 101–14, ECF No. 149.) While these factors
12 merit a significant fee award, an award of 25% of the settlement fund is unreasonable
13 given the magnitude of the fund. *See In re Prudential Ins. Co. Am. Sales Practice Litig.*
14 *Agent Actions*, 148 F.3d 283, 339 (3d Cir. 1998) (endorsing proposition that “percentage
15 awards generally decrease as the amount of the recovery increases,” given that “in many
16 instances the increase in recovery is merely a factor of the size of the class and has no
17 direct relationship to the efforts of counsel” (cleaned up)). The 25% benchmark “is of
18 little assistance” here, where the common fund is \$98 million. *In re Optical Disk Drive*
19 *Prods. Antitrust Litig.*, 959 F.3d 922, 932–93 (9th Cir. 2020) (applying rule to
20 “megafund” cases, declining to define “megafund,” but noting that courts often treat
21 funds in excess of \$100 million as “megafunds”).

22 A lodestar cross-check demonstrates the unreasonableness of a 25% award. *See*
23 *Vizcaino*, 290 F.3d at 1050 (“[T]he lodestar may provide a useful perspective on the
24 reasonableness of a given percentage award.”). Class Counsel submits that they
25 expended 18,675.35 hours in connection with the action, and that the lodestar figure
26 derived from current hourly rates is \$9,077,838.75. (Rizio-Hamilton Decl. ¶ 105.)¹ An

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28 ¹ For the purpose of the cross-check, the Court has accepted Class Counsel’s lodestar

1 award of 25% of the fund net of litigation expenses, \$24,213,013, would represent a
2 lodestar multiplier of 2.67 at current rates. (*Id.*) While this multiplier is within the range
3 of lodestar multipliers in class actions resolved with common fund settlements, *see*
4 *Vizcaino*, 290 F.3d at 1051 n.6, 1052–54 (determining that a fee multiplier of 1.0–4.0
5 was awarded in 83% of common fund cases reviewed and a multiplier of 1.5–3.0 was
6 awarded in 54% of cases), it is excessive here given the magnitude of the settlement
7 fund relative to counsel’s performance. Counsel would reap an extra \$15 million
8 windfall (on top of the profit counsel receives baked into its hourly rates) if the Court
9 granted the request in full. While counsel should be commended and compensated for
10 the risk they took, the work they did, and the result they achieved, that outsized windfall
11 not be fair to the other interests in this case. *See Muehler v. Land O’Lakes, Inc.*, 617 F.
12 Supp. 1370, 1379 (D. Minn. 1985) (“It is the duty of the court to adequately compensate.
13 Just as too great an award might be unfair to the class members, too small an award is
14 detrimental to these lawyers, the legal profession, and society at large.”).

15 The Court determines that an award of 14.1% of the common fund net of
16 litigation expenses is appropriate in light of the hours counsel spent on the case, the
17 magnitude of the settlement fund, the results achieved, and the risks and burdens borne
18 by counsel. This award, \$13,656,139.65, represents a 1.5 multiplier of the lodestar
19 calculated at current rates, which is within the range of appropriate lodestar multipliers
20 in common fund cases, *Vizcaino*, 290 F.3d at 1051 n.6, and within the range of awards
21 in securities class actions with common funds of similar magnitude, *Police Ret. Sys. of*
22 *St. Louis v. Granite Constr. Inc.*, No. C 19-04744 WHA, 2022 U.S. Dist. LEXIS 47749,
23 at *20–21 (N.D. Cal. Mar. 17, 2022).

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26 figure without modification. *See Vizcaino*, 290 F.3d at 1050 (finding no abuse of
27 discretion where court accepted for the purpose of a lodestar cross-check the submitted
28 lodestar calculation based on current hourly rates where “nothing in the
record . . . suggest[ed] that any of the hours claimed should be disallowed”). Nothing in
this Order should be read to endorse any specific rates and hours claimed in the lodestar.

1 Mr. Hayes objects to the fee request on the basis that Class Counsel was able to
2 recover only a fraction of the damages suffered by only some of the shareholders and
3 options purchasers affected by the purported securities law violations. He asks the Court
4 to award counsel \$9.8 million. (Obj. 2.) Mr. Hayes offers no basis for his calculation of
5 this figure. As previously discussed, the settlement here is relatively favorable to the
6 class considering settlements in similar securities class actions.

7 **C. Summary**

8 The Court orders as follows:

9 1. This Order incorporates by reference the definitions in the Stipulation and
10 Agreement of Settlement dated November 23, 2021 (ECF No. 143-1) (the
11 “Stipulation”) and all terms not otherwise defined herein shall have the same meanings
12 as set forth in the Stipulation.

13 2. The Court has jurisdiction to enter this Order and over the subject matter
14 of the Action and all Parties to the Action, including all Class Members.

15 3. Plaintiffs’ Counsel are hereby awarded attorneys’ fees in the amount of
16 \$13,656,139.65, as well as \$1,139,330.73 in payment of Plaintiffs’ Counsel’s litigation
17 expenses (which fees and expenses shall be paid from the Settlement Fund), which sums
18 the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys’
19 fees awarded amongst Plaintiffs’ Counsel in a manner which it, in good faith, believes
20 reflects the contributions of such counsel to the institution, prosecution, and settlement
21 of the Action.

22 4. In making this award of attorneys’ fees and payment of expenses from the
23 Settlement Fund, the Court has considered and found that:

24 (a) The Settlement has created a fund of \$98,000,000 in cash that has been
25 funded into escrow pursuant to the terms of the Stipulation, and that numerous Class
26 Members who submit acceptable Claim Forms will benefit from the Settlement that
27 occurred because of the efforts of Plaintiffs’ Counsel;

1 (b) Copies of the Notice were mailed to over 194,000 potential Class Members
2 and nominees stating that Lead Counsel would apply for attorneys' fees in an amount
3 not to exceed 25% of the Settlement Fund and for Litigation Expenses in an amount not
4 to exceed \$1,500,000;

5 (c) One objection to the motion for attorneys' fees was received from objector
6 James J. Hayes, and the Court hereby overrules the objection;

7 (d) Plaintiffs' Counsel conducted the litigation and achieved the Settlement
8 with skill, perseverance, and diligent advocacy;

9 (e) The Action raised a number of complex issues;

10 (f) Had Plaintiffs' Counsel not achieved the Settlement, there would remain a
11 significant risk that Lead Plaintiffs and the other members of the Class may have
12 recovered less or nothing from Defendants;

13 (g) Plaintiffs' Counsel devoted over 18,600 hours, with a lodestar value of
14 approximately \$9 million, to achieve the Settlement; and

15 (h) The amount of attorneys' fees awarded and expenses to be paid from the
16 Settlement Fund are fair and reasonable and consistent with awards in similar cases.

17 5. Lead Plaintiff DeKalb County Employees Retirement System is hereby
18 awarded \$5,515.00 from the Settlement Fund as reimbursement for its reasonable costs
19 and expenses directly related to its representation of the Class.

20 6. Lead Plaintiff New Orleans Employees' Retirement System is hereby
21 awarded \$3,100.00 from the Settlement Fund as reimbursement for its reasonable costs
22 and expenses directly related to its representation of the Class.

23 7. Any appeal or any challenge affecting this Court's approval regarding any
24 attorneys' fees and expense application shall in no way disturb or affect the finality of
25 the Judgment.

26 8. Exclusive jurisdiction is hereby retained over the Parties and the Class
27 Members for all matters relating to this Action, including the administration,
28 interpretation, effectuation or enforcement of the Stipulation and this Order.

1 9. In the event that the Settlement is terminated or the Effective Date of the
2 Settlement otherwise fails to occur, this Order shall be rendered null and void to the
3 extent provided by the Stipulation.

4 **V. CONCLUSION**

5 The Court grants in part and denies in part the motion for leave to file
6 supplemental authority, grants the motion for final approval of the class settlement, and
7 grants in part and denies in part the motion for attorney’s fees, expenses, and a service
8 award. The Court will enter Lead Plaintiffs’ proposed judgment.

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10 **IT IS SO ORDERED.**

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12 Dated: May 18, 2022

13 MARK C. SCARSI
14 UNITED STATES DISTRICT JUDGE
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