

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF CALIFORNIA

3 ERIC HOFFMAN, an individual and
4 on behalf of all others similarly
situated,

Plaintiff,

5 vs.

6 PEG PEREGO U.S.A., INC.,

7 Defendant.

Case No.: 3:14-CV-2227-CAB-JLB

**ORDER PRELIMINARILY
APPROVING CLASS
SETTLEMENT**

[Doc. No. 27]

8
9 Plaintiff initiated this putative class action lawsuit in San Diego County
10 Superior Court on August 11, 2014, alleging violations of various California code
11 provisions arising out of Defendant's allegedly false representations that children's
12 riding vehicles manufactured and sold by Defendant were "Made in the U.S.A."
13 The complaint was brought on behalf all purchasers of these children's vehicles in
14 California. Defendant removed the case to this Court on September 18, 2014,
15 under the Class Action Fairness Act of 2005 ("CAFA").

16 On March 13, 2015, the parties notified the Court that they had reached an
17 agreement in principle to settle the case, and also jointly moved to allow Plaintiff
18 to file an amended complaint. [Doc. Nos. 17, 18.] The Court granted leave to
19 amend, and Plaintiff filed an amended complaint, primarily for the purpose of
20 including national class allegations, on March 17, 2015. Now, Plaintiff has filed

1 an unopposed motion for preliminary approval of the parties' settlement, which is
2 memorialized in a written settlement agreement dated June 1, 2015.

3 After considering Plaintiff's motion, which includes the settlement
4 agreement itself, as well as the proposed class notice and claim forms, the Court
5 preliminarily finds as follows:

6 1. The terms of the Settlement are fair, reasonable and adequate, subject
7 to further consideration at the Final Fairness and Approval Hearing described
8 below;

9 2. Pursuant to the Settlement Agreement, and for settlement purposes only,
10 that

11 a. The Settlement Class is so numerous that joinder of all members is
12 impracticable;

13 b. There are questions of law or fact common to the Settlement Class
14 which predominate over the questions affecting only individual
15 members;

16 c. The claims of the Class Representative are typical of the claim of the
17 Settlement Class that the Class Representative seeks to certify;

18 d. The Class Representative, Plaintiff Eric Hofmann, has fairly and
19 adequately protected the interests of the Class and is, therefore,
20 appointed as the representative of the Class;

1 e. Class Counsel, Del Mar Law Group LLP, has fairly and adequately
2 protected the interests of the Class and is qualified to represent the
3 class and is, therefore, appointed as attorneys for the Class for
4 purposes of settlement; and

5 f. Certification of the Class is superior to other available methods for
6 fair and efficient adjudication of the controversy;

7 3. The Settlement was reached as a result of arm's-length negotiations
8 between counsel for Plaintiff and counsel for Defendant and a mediation session
9 with a respected mediator, the Honorable Wayne J. Peterson (Ret.);

10 4. The proponents of the settlement, counsel for the parties, are
11 experienced in similar litigation; and

12 5. The Settlement confers substantial benefits upon the Settlement Class,
13 particularly in light of the damages that Plaintiff and Class Counsel believe are
14 potentially recoverable or provable at trial, without the costs, uncertainties, delays,
15 and other risks associated with continued litigation, trial, and/or appeal.

16 In light of the foregoing, it is hereby **ORDERED** that the Motion is
17 **GRANTED**. It is further **ORDERED** as follows:

18 1. The Court hereby preliminarily approves of the class action settlement
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20

1 upon the terms and conditions set forth in the Settlement Agreement,¹ subject to
2 further consideration at the Fairness Hearing (as described below);

3 2. Solely for the purpose of settlement in accordance with the Settlement
4 Agreement, the Court finds that the requirements of Rule 23 of the Federal Rules
5 of Civil Procedure and other laws and rules applicable to preliminary settlement
6 approval of class actions have been satisfied, and the Court hereby certifies a
7 Settlement Class consisting of:

8 All persons in the United States who purchased any Class Product²
9 between August 11, 2010 and December 31, 2014. Excluded from the
10 Settlement Class are all persons who are employees, directors,
11 officers, and agents of Defendants or its subsidiaries and affiliated
12 companies, as well as the Court and its immediate family and staff.

13 3. Having considered the relevant factors set forth in Rule 23, the Court
14 has made a preliminary determination that Plaintiff Eric Hofmann and Class
15 Counsel are adequate representatives of the Settlement Class and hereby appoints
16 them as such solely for purposes of settlement.

17 4. On or before **July 3, 2015**, Class Counsel or defense counsel shall file
18 a sworn affidavit confirming that the requirements of 28 U.S.C. § 1715 have been
19 satisfied, or in the alternative, a notice explaining why such requirements do not

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19 ¹ This Preliminary Approval Order incorporates by reference the definitions in the
Settlement Agreement, and all terms used herein shall have the same meaning as
set forth in the Settlement Agreement.

20 ² The term “Class Products” is defined in the Settlement Agreement as 38 Peg
Perego children’s riding vehicle products (detailed with particularity in Exhibit G
annexed thereto) that were sold with an unqualified “Made in USA” label.

1 apply to this settlement.

2 5. The Final Fairness and Approval Hearing (the “Fairness Hearing”)
3 shall be held on **October 15, 2015, at 10:00 a.m.**, before the Honorable Cathy Ann
4 Bencivengo, in Courtroom 4C of the United States District Court for the Southern
5 District of California, located at 221 West Broadway, San Diego, CA 92101. At
6 that time, the Court shall determine: (a) whether the proposed settlement of the
7 Action on the terms and conditions provided for in the Settlement Agreement is
8 fair, just, reasonable and adequate and should be finally approved; (b) whether
9 judgment as provided in the Settlement Agreement should be entered herein; (c)
10 whether to approve Class Counsel’s application for an award of attorneys’ fees and
11 costs, Plaintiff’s application for a service payment; and (d) such other matters as
12 the Court deems just and appropriate. The Court may continue or adjourn the Final
13 Fairness and Approval Hearing without further notice to members of the Class.

14 6. Class Counsel shall file a motion for final approval of the Settlement
15 no later than **September 17, 2015**. Any request by Class Counsel for an award of
16 attorneys’ fees or reimbursement of expenses shall be filed concurrently, and that
17 request shall be accompanied by supporting evidence.

18 7. The parties may further modify the Settlement Agreement prior to the
19 Fairness Hearing so long as such modifications do not materially change the terms
20 of the Settlement provided thereunder. The Court may approve the Settlement

1 Agreement with such modifications as may be agreed to by the parties, if
2 appropriate, without further notice to the Settlement Class.

3 8. After the Fairness Hearing, the Court may enter a Final Order and
4 Final Judgment and Injunction in accordance with the Settlement Agreement that
5 will adjudicate the rights of the Settlement Class Members (as defined in the
6 Agreement) with respect to the claims being settled.

7 9. **Approval of Form of Notice.** The Court hereby approves, as to form
8 and content, the forms of notice annexed as Exhibits A, F, and H to the Settlement
9 Agreement and the Notice Program set forth in Section E of the Settlement
10 Agreement. The Court finds that the Notice and Summary Notice meet the
11 requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and (e), and due
12 process, and are the best notice practicable under the circumstances, and shall
13 constitute due and sufficient notice to all persons entitled thereto.

14 10. **Approval of Notice Procedures.** The Court hereby approves the
15 procedures set forth in the Settlement Agreement, and described below, for
16 providing notice to the proposed Settlement Class. The Court finds that the
17 procedures are fair, reasonable, and adequate; the best notice practicable under the
18 circumstances; consistent with due process; and shall constitute due and sufficient
19 notice to all persons entitled thereto.

20 11. Within twenty (20) days of the date of this Order, the Court hereby

1 directs Defendant to distribute the Notice as set forth in Section E of the
2 Settlement. Defendant shall pay the costs of claims administration, including the
3 costs associated with preparing, printing and disseminating to the Settlement Class
4 the Notices as set forth in Section E of the Settlement Agreement in an amount not
5 to exceed \$60,000.00.

6 12. At least thirty (30) days prior to the Fairness Hearing, Defendant,
7 through its counsel of record, shall cause to be filed with the Court a sworn
8 affidavit evidencing compliance with the provisions of Settlement Agreement as it
9 relates to providing Notice.

10 13. Pending resolution of these settlement proceedings, no other action
11 now pending or hereinafter filed arising out of all or any part of the subject matter
12 of the Action shall be maintained as a class action and, except as provided by
13 further order of the Court, for good cause shown, all persons are hereby enjoined,
14 during the pendency of these settlement proceedings, from filing or prosecuting
15 purported class actions against Defendant with respect to any of the Released
16 Claims as defined in the Settlement Agreement.

17 14. Upon the Settlement Effective Date, as defined in the Settlement
18 Agreement, all members of the Settlement Class who have not opted out of the
19 settlement shall be enjoined and barred from asserting any of the Released Claims
20 against Peg Perego and the Released Parties, and each Class Member shall be

1 deemed to release any and all such Released Claims as against Peg Perego and the
2 Released Parties, as these terms are defined in the Settlement Agreement.

3 15. Any Class Member may enter an appearance through counsel of such
4 member's own choosing and at such member's own expense or may appear
5 individually and show cause, if he or she has any facts or arguments to present, as
6 to: (a) why the proposed settlement of the Action as set forth in the Settlement
7 Agreement should or should not be approved as fair, reasonable, and adequate; and
8 (b) why the final approval order and judgment should or should not be entered on
9 the proposed Settlement Agreement. However, no Class Member or any other
10 person shall be heard or entitled to contest the approval of the terms and conditions
11 of the proposed settlement, or, if approved, the Final Approval Order and
12 Judgment to be entered thereon approving the same or the fees and expenses to be
13 awarded, unless on or before **August 21, 2015**, that person has filed with the Court
14 and served (by hand delivery or by First Class regular U.S. mail) written objections
15 complying with the specifications in the Notice. Service of any objections shall be
16 made to Class Counsel, Attn: John H. Donboli, DEL MAR LAW GROUP, LLP,
17 12250 El Camino Real, Suite 120, San Diego, CA 92130, and Peg Perego's
18 Counsel: Devin Stone, BARNES & THORNBURG LLP, 2029 Century Park East,
19 Suite 300, Los Angeles, CA 90067-3012. In addition, if a Class Member wishes to
20 submit to the Court any brief in support of his or her objection, he or she must file

1 the brief with the Court and serve it on both Class Counsel and counsel for
2 Defendant no later than **September 15, 2015**.

3 16. Any Class Member who does not make their objection in the manner
4 provided for in this Preliminary Approval Order shall be deemed to have waived
5 such objection and shall forever be foreclosed from making any objection to or
6 appeal of the fairness, reasonableness or adequacy of the proposed settlement, and
7 to the award of fees and expenses to Class Counsel and other costs, all as set forth
8 in the Settlement Agreement and Preliminary Order.

9 17. Any member of the Settlement Class may choose to exclude himself
10 or herself from the settlement. Any such person who chooses to be excluded from
11 the settlement will not be entitled to any recovery and will not be bound by the
12 Settlement Agreement or have any right to object, appear or comment thereon.
13 Any such person who chooses to request exclusion may do so by submitting a
14 written statement requesting exclusion from the class that includes the name,
15 address, and telephone number of the person requesting exclusion, references the
16 name and number of this litigation (*Hofmann v. Peg Perego et al.*, United States
17 District Court, Case No. 3:14-cv-2227-CAB-JLB), and is signed personally by the
18 person requesting exclusion. The statement must be mailed to Class Counsel and
19 counsel for Defendant and postmarked on or before **August 21, 2015**.

20 18. Neither the Settlement Agreement, nor any of its terms or provisions,

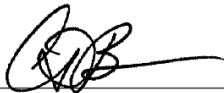
1 nor any of the negotiations or proceedings connected with it, shall be construed in
2 this or any lawsuit as an admission or concession by Defendant of the truth of any
3 of the allegations of the Action, or of any liability, fault, or wrongdoing of any
4 kind, or by the named Plaintiff Eric Hofmann or any other member of the
5 Settlement Class of the merit of any defense or lack of merit of any claim.

6 19. The Court reserves the right to continue or adjourn the date of the
7 Fairness Hearing without further notice to the Settlement Class, and retains
8 jurisdiction to consider all further applications arising out of or connected with the
9 proposed settlement.

10 20. Class Counsel and Defense Counsel are hereby authorized to use all
11 reasonable procedures in connection with approval and administration of the
12 settlement that are not materially inconsistent with this Preliminary Approval
13 Order or the Settlement Agreement, including making, without further approval of
14 the Court, minor changes to the form or content of the Notice, Summary Notice,
15 and other exhibits that they jointly agree are reasonable or necessary to effectuate
16 the Settlement and the purposes of this Preliminary Approval Order.

17 It is **SO ORDERED**.

18 Dated: June 19, 2015

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20 _____
Hon. Cathy Ann Bencivengo
United States District Judge