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8 UNITED STATES DISTRICT COURT  
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 10 CENTRAL DISTRICT OF CALIFORNIA  
 11 SOUTHERN DIVISION

12 MGA ENTERTAINMENT, INC.,

13 Plaintiff,

14 vs.

15 MATTEL, INC. and ROBERT A.  
 16 ECKERT,

17 Defendants.

CASE NO. CV 11-01063

Hon. David O. Carter

MATTEL, INC.'S OPPOSITION TO  
 PLAINTIFF'S *EX PARTE* APPLICATION  
 TO ACCESS "ATTORNEYS' EYES  
 ONLY" DOCUMENTS

Hearing Date: TBD  
 Time: TBD  
 Place: Courtroom 9D

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1 **Memorandum of Points and Authorities**

2 The Court should reject MGA’s *ex parte* application. It flouts the Court’s  
3 prior directives, and the relief it seeks is unjustified.

4 **I. MGA’S EX PARTE APPLICATION IGNORES THE COURT’S PRIOR**  
5 **DIRECTIVES**

6 While its application ignores this, MGA has previously raised this same  
7 request with the Court. During a discussion with the Court and Mattel’s counsel,  
8 counsel for MGA in the ongoing trial raised MGA’s request that its counsel in the  
9 11-01063 case, Blecher & Collins, be permitted access to Mattel’s Attorneys’ Eyes  
10 Only (“AEO”) produced materials. The Court instructed MGA’s counsel that Mr.  
11 Blecher should come to the Courthouse and discuss the matter with the Court and  
12 Mattel’s counsel. Rather than follow the Court’s directive, MGA filed this improper  
13 *ex parte* application. As the Court directed, if MGA wants to pursue this request, its  
14 counsel in this case, Mr. Blecher, should appear in Santa Ana to address the matter  
15 with the Court and Mattel.

16 **II. MGA’S EX PARTE APPLICATION IS UNNECESSARY AND**  
17 **UNJUSTIFIED**

18 There is no basis for granting MGA’s request in any case. First, on March 17,  
19 2011, Mattel moved to dismiss this action. Dkt. No. 11. In order to avoid dismissal,  
20 MGA must show that its *existing* complaint states valid claims against Mattel.  
21 MGA’s separate counsel in this case does not need access to Mattel’s AEO  
22 materials produced in the cases being tried presently to meet that burden. The  
23 hearing on Mattel’s Motion to Dismiss has been extended to early June based on  
24 MGA’s request for a more than one-month period of time to oppose Mattel’s motion  
25 to dismiss. Dkt. No. 10-1, at 2. Given that briefing and hearing schedule, MGA  
26 clearly has no need for *expedited* access to Mattel’s confidential information even if  
27 MGA’s complaint could survive Mattel’s Rule 12 motion, which it cannot. Indeed,  
28 MGA has made no showing whatsoever, in its abbreviated application, that it has

1 any need, let alone a compelling one, for *ex parte* relief. Nowhere has it shown that  
2 its “cause will be irreparably prejudiced if the underlying motion is heard according  
3 to regular noticed motion procedures.” Securities and Exchange Com’n v. Private  
4 Equity Management Group, LLC, 2009 WL 1463439 at \*1 (C.D. Cal., May 18,  
5 2009); see Mission Power Eng’g Co. v. Continental Cas. Co., 883 F. Supp. 488, 492  
6 (C.D. Cal. 1995).

7         Second, MGA’s application conflicts with the Court’s prior rulings. Liberal  
8 discovery is provided under the Federal Rules for the purpose of litigating existing  
9 claims. In accordance, the Court has ruled, on several occasions, that discovery in  
10 this case cannot be used to promote or create new claims in separate cases. In fact,  
11 the Court held *in camera* proceedings to determine whether Mattel violated this rule  
12 by promoting proceedings in Mexico. MGA also opposed a Mattel motion to  
13 compel by arguing, in language it attributed to the Court, that “materials in this case  
14 should not be used to file new lawsuits.” Sep. 2, 2010 Hearing Tr. at 8:2-7. MGA  
15 now seeks to do precisely what it argued Mattel should be precluded from doing. It  
16 has filed a new action with new claims that should have been part of the Mattel v.  
17 MGA cases being tried presently, but which MGA tactically chose not to file as part  
18 of those cases, and it now seeks to use existing discovery to further those separate,  
19 new claims. Under the Court’s rulings, MGA’s request to do so is improper and  
20 should be rejected.

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**Conclusion**

For the foregoing reasons, Mattel respectfully requests that that the Court deny MGA's *ex parte* application in its entirety.

DATED: April 4, 2011

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Michael T. Zeller  
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