

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 2 John B. Quinn (Bar No. 090378)
 3 (johnquinn@quinnemanuel.com)
 4 Michael T. Zeller (Bar No. 196417)
 5 (michaelzeller@quinnemanuel.com)
 6 865 South Figueroa Street, 10th Floor
 Los Angeles, California 90017-2543
 Telephone: (213) 443-3000
 Facsimile: (213) 443-3100

7 Attorneys for Mattel, Inc. and
 8 Robert A. Eckert

9 UNITED STATES DISTRICT COURT
 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 AND ROBERT A.
 ECKERT'S NOTICE OF FINALITY

Hearing Date: October 11, 2011

Time: 8:30 a.m.

Place: Courtroom 9D

19
20
21
22
23
24
25
26
27
28

1 Defendants Mattel, Inc. and Robert A. Eckert (“Mattel”) file this Notice of
2 Finality to address the impact of the Court’s August 4, 2011 Judgment in Case No.
3 04-9049 (Dkt. No. 10704) on Mattel’s pending Motion to Dismiss the Complaint of
4 MGA Entertainment Inc. (“MGA”) (Case No. 11-1063, Dkt. No. 11).

5 The Court’s August 4, 2011 Judgment was rendered on the merits and,
6 notwithstanding any appeal, constitutes a “final” disposition of Case No. 04-9049
7 for res judicata purposes. See Tripathi v. Henman, 857 F.2d 1366, 1367 (9th Cir.
8 1988) (“The established rule in the federal courts is that a final judgment retains all
9 of its res judicata consequences pending decision of the appeal.” (internal quotation
10 marks omitted)); see also Arthur R. Wright et al., Fed. Practice and Proc. Civ. §
11 4432 (2d ed. 2002). Because final judgment has been entered in Case No. 04-9049,
12 the doctrine of claim preclusion now governs Mattel’s contention, in its pending
13 motion to dismiss, that MGA’s claims here in Case No. 11-1063 are barred because
14 they arose from the same cause of action as MGA’s claims in the prior Case No. 04-
15 9049. See Adams v. Cal. Dept. of Health Serv., 487 F.3d 684, 688-89 (9th Cir.
16 2007) (applying claim-splitting doctrine prior to entry of final judgment); Tahoe-
17 Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 322 F.3d
18 1064, 1077 (9th Cir. 2003) (applying claim preclusion doctrine after entry of final
19 judgment).

20 Res judicata applies for the reasons Mattel explained previously in arguing
21 that claim-splitting applies and that MGA’s claims here were compulsory
22 counterclaims in Case No. 04-9049. See Adams, 487 F.3d at 688 (explaining that
23 the test for claim-splitting is based on the test for claim preclusion).

24 Because res judicata now applies, dismissal of this action is required. See
25 Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 399 (1981) (case must be
26 dismissed where elements of claim preclusion are satisfied); Mitchell v. CB Richard
27 Ellis Long Term Disability Plan, 611 F.3d 1192, 1201 (9th Cir. 2010) (“[W]here a
28

1 party has failed to plead a compulsory counterclaim, the claim is waived and the
2 party is precluded by principles of res judicata from raising it again.”).

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: September 12, 2011

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Michael T. Zeller

Michael T. Zeller
Attorneys for Mattel, Inc. and
Robert A. Eckert