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 8 MGA ENTERTAINMENT, INC.

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

<p>13 MGA ENTERTAINMENT, INC.,          14 Plaintiff,          15 vs.          16 MATTEL, INC. and ROBERT A.          ECKERT,          17 Defendants.</p>	<p>) CASE NO. CV 11-01063 DOC (RNBx)          )          ) <b>PLAINTIFF MGA</b>          ) <b>ENTERTAINMENT, INC.’S</b>          ) <b>RESPONSE TO DEFENDANTS’</b>          ) <b>NOTICE OF FINALITY</b>          )          ) Hon. David O. Carter          ) Courtroom 9D          )          ) Hearing: October 11, 2011          ) Time: 8:30 a.m.          )</p>
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1 The August 4, 2011 Judgment operates as *res judicata* **only** if the elements of  
2 the claim preclusion exist independent of the Judgment. Because they do not, the  
3 Judgment in this case has no legal significance. See *The Haytian Republic*, 154 U.S.  
4 118, 124, 14 S. Ct. 992, 993 (1894).

5 As Plaintiff MGA observed in its Opposition to Defendants’ Motion to  
6 Dismiss, filed on April 25, 2011, there is no “splitting” or “claim preclusion” here  
7 because:

8 • This antitrust case arose and is based on facts that have accumulated after the  
9 first action “and it is, therefore, a ‘new claim’ ... not barred by *res judicata*.” *Storey*  
10 *v. Cello Holdings, L.L.C.*, 347 F.3d 370, 383-84 (2d Cir. 2003); *Adams v. California*  
11 *Dep’t of Health Servs.*, 487 F.3d 684, 693 (9<sup>th</sup> Cir. 2007); *Curtis v. Citibank, N.A.*, 226  
12 F.3d 133, 139-40 (2d Cir. 2000) (reversing district court’s dismissal of claims in the  
13 second action arising out of events occurring subsequent to the filing of the complaint  
14 in the first action);

15 • This antitrust suit is not “virtually identical” with or duplicative of the  
16 original case. *Walton v. Eaton Corp.*, 563 F.2d 66, 70-71 (3d Cir. 1977) cited with  
17 approval in *Adams*, 487 F.3d at 688, and *Russ v. Standard Ins. Co.*, 120 F.3d 988, 990  
18 (9<sup>th</sup> Cir. 1997), in that this case requires proof of eight separate elements different  
19 from the elements/evidence adduced in the original case.

20 • MGA’s antitrust case is not a compulsory counterclaim: *Hydranautics v.*  
21 *FilmTec Corp.*, 70 F.3d 533, 536-37 (9<sup>th</sup> Cir. 1995).

22 For these reasons, there is no claim splitting or claim preclusion that invokes  
23 *res judicata*. Accordingly, because the Judgment does independently provide a basis  
24 for *res judicata* it should not affect the decision in this case.

25 Dated: September 23, 2011

BLECHER & COLLINS, P.C.

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27 By: /s/ Maxwell M. Blecher  
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Attorneys for MGA Entertainment, Inc.