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E-FILED 06-02-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

QUIA CORPORATION,

No. C10-01902 JF (HRL)

Plaintiff,
v.

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL EXPERT
DISCOVERY**

MATTEL, INC. and FISHER-PRICE, INC.,

Defendants.

Defendants move to compel expert discovery. This court directed the parties to (1) meet-and-confer in person to resolve their disputes and (2) submit a joint report as to any that remained unresolved. (Docket No. 99, May 17, 2011 Order). Having reviewed the parties' joint report (Docket No. 101), this court grants defendants' motion to compel.

In essence, plaintiff argues that the instant motion should be denied because defendants served their expert subpoenas after the April 22, 2011 fact discovery cutoff. Alternatively, plaintiff suggests that defendants should have specified in the parties' stipulated scheduling order (Docket No. 94) that expert subpoenas could be served during the period for expert discovery, which closes on June 3, 2011. As stated in its May 17, 2011 order, this court does not agree with plaintiff's interpretation of the court's scheduling order. Plaintiff otherwise responds to the instant motion by raising issues concerning fact discovery which (1) are not before this court on the instant motion and (2) have nothing to do with the expert discovery in

1 question. Defendants say that the subpoenas call for information required to be disclosed by
2 Fed. R. Civ. P. 26. This court is told that plaintiff now agrees to produce that information. As
3 for other requested categories of documents, defendants argue that they pertain to, among other
4 things, issues of expert credibility and possible bias. Plaintiff has made no persuasive argument
5 or showing to the contrary.

6 Accordingly, to the extent the subpoenaed documents have not already been produced,
7 they shall be produced forthwith, and in any event, no later than 5 days from the date of this
8 order. To the extent any documents legitimately are privileged or otherwise protected from
9 discovery, plaintiff shall produce, within 5 days from the date of this order, a privilege log
10 identifying what documents are being withheld and the basis for the asserted privilege. See
11 FED. R. CIV. P. 26(b)(5). Plaintiff is advised that gamesmanship in the designation of
12 documents as privileged or otherwise protected from discovery will not be countenanced.

13 This court finds that defendants should have an opportunity to further depose plaintiffs'
14 experts about documents that have yet to be produced or that were not produced sufficiently in
15 advance of plaintiffs' experts' depositions that already have been taken. Such relief, however,
16 is conditioned on the presiding judge's determination that the present case schedule should be
17 modified to allow additional time for defendants to examine plaintiff's experts about those
18 documents.

19 SO ORDERED.

20 Dated: June 2, 2011



HOWARD B. LOYTE
UNITED STATES MAGISTRATE JUDGE

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