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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES
16 CENTRAL DIVISION

18 O'MELVENY & MYERS LLP, a limited
19 liability partnership,

20 Plaintiff,

21 vs.

22 MGA ENTERTAINMENT, INC., a California
23 corporation;

24 DOES 1-20, inclusive,

25 Defendants.

CASE NO.

COMPLAINT OF O'MELVENY &
MYERS LLP AGAINST MGA
ENTERTAINMENT, INC. FOR:

(1) BREACH OF CONTRACT;
(2) ACCOUNT STATED;
(3) SERVICES RENDERED; AND
(4) QUANTUM MERUIT

DEMAND FOR JURY TRIAL

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 13 2010

John A. Clarke, Executive Officer/Clerk
By *[Signature]*, Deputy
DOROTHY SWAIN

BC441593

1 Complainant O’Melveny & Myers LLP (“O’Melveny”) brings this action against Defendant
2 MGA Entertainment, Inc. (“MGA”) and Does 1-20 (collectively with MGA, “Defendants”) as
3 follows:

4 OVERVIEW

5 1. This Complaint is brought by O’Melveny seeking payment for services rendered and
6 costs incurred by O’Melveny in connection with O’Melveny’s representation of MGA against Mattel,
7 Inc. (“Mattel”), and others, in various matters pertaining to Bratz, a popular line of toy dolls.
8 O’Melveny had been representing MGA successfully and professionally, including winning a
9 contemporaneous jury trial victory on behalf of MGA against Art Attacks Ink, LLC. Regrettably,
10 notwithstanding the high quality work provided by O’Melveny and the firm’s extraordinary efforts on
11 behalf of MGA—including preparing the case against Mattel for trial—MGA, in violation of its
12 agreements with O’Melveny since 2007, has refused to pay over \$10.2 million for legal services
13 provided by O’Melveny and costs incurred. These fees and costs accumulated over many months of
14 work on the very complicated and litigious case against Mattel and related matters. MGA’s refusal,
15 coupled with disagreements with MGA that made it unreasonably difficult for O’Melveny to continue
16 serving as MGA’s counsel, led O’Melveny to seek court permission to withdraw as MGA’s counsel
17 pursuant to California Rules of Professional Conduct, Rule 3-700, which the Court granted on
18 October 12, 2007.

19 2. As has been reported publicly, O’Melveny is not the only professional services firm
20 that has withdrawn from representing MGA, and upon information and belief, some of those firms
21 have withdrawn due to MGA’s behavior with respect to fees. MGA’s conduct has resulted in what
22 may be described as a revolving door of law firms in connection with the Bratz matters.

23 3. Both during its representation of MGA, and for almost three years after the Court
24 determined that it was appropriate for O’Melveny to withdraw as MGA’s counsel, O’Melveny has
25 attempted to resolve this fee dispute with MGA outside of the courtroom by direct negotiation and
26 professional mediation. All of those efforts have proven unsuccessful, and O’Melveny’s patience and
27 attempts at resolution have been disregarded or exploited by MGA. For example, payment was
28 delayed because MGA claimed to be conducting fee audits that have not been provided to

1 O'Melveny; instead, when one was completed, MGA apparently commissioned another. This and
2 other pretextual and dubious excuses were offered by MGA to O'Melveny directly and,
3 unfortunately, against O'Melveny in public forums such as the press—at one point MGA proclaimed
4 a “probe” of the firm’s invoices—where MGA knew O'Melveny was severely constrained in how it
5 could respond. With MGA never having intimated a willingness to pay any amount at all for the
6 work encompassed by the outstanding invoices—which include charges for outside vendors where
7 the firm has been left holding the bag—O'Melveny has no choice but to become a reluctant litigant,
8 bringing this action to enforce its basic contract right to be paid its outstanding fees for the hard work
9 it performed for this client.

10 4. O'Melveny brings this litigation only as a last resort. After having tried for years and
11 in every possible way to resolve this fee dispute short of litigation, O'Melveny has no alternative but
12 to ask the court to compel MGA to fulfill its obligation to O'Melveny.

13 THE PARTIES

14 5. O'Melveny is, and at all times mentioned herein was, a limited liability partnership
15 engaged in the practice of law, with offices in Los Angeles County, California.

16 6. O'Melveny is informed and believes, and on that basis alleges, that Defendant MGA is
17 a California corporation with its principal place of business in Van Nuys, California.

18 7. Does 1-20 are unknown, or their roles in the events identified in this Complaint are
19 unknown, to O'Melveny at this time, but they are responsible for the obligations set forth in this
20 Complaint and the acts complained of herein as employees, officers, directors, agents, or alter egos of
21 MGA.

22 GENERAL ALLEGATIONS

23 8. In or around May 2004, MGA hired O'Melveny to represent MGA in a lawsuit filed
24 against Carter Bryant of MGA by Mattel, Inc.

25 9. In or around May 2004, MGA hired O'Melveny to represent MGA in a lawsuit filed
26 against MGA by Art Attacks Ink LLC.

27 10. In or around May 2004, MGA hired O'Melveny to represent MGA in a potential
28 lawsuit by MGA against Mattel, Inc.

1 11. During the relationship, MGA also hired O'Melveny to represent MGA in other
2 matters, including in certain investigations in the United States and elsewhere.

3 12. In each of the engagements discussed above, MGA entered into oral agreements with
4 O'Melveny, whose material terms were subsequently confirmed in writing, whereby O'Melveny
5 agreed to represent MGA and others with regard to matters described above, and MGA agreed to pay,
6 and for years did pay, O'Melveny for its legal services at O'Melveny's usual hourly rates and to
7 promptly reimburse O'Melveny for all disbursements that it advanced on MGA's behalf (collectively,
8 "Agreements").

9 13. Pursuant to the Agreements, O'Melveny rendered legal services and incurred costs
10 with respect to the matters identified above.

11 14. O'Melveny provided MGA with periodic billing statements detailing the work
12 performed, the timekeepers involved, the respective rates charged, and the costs incurred, and hence
13 the sums owed by reason thereof. Despite multiple requests and demands for payment, MGA has
14 failed to pay O'Melveny for a substantial portion of those fees and costs in breach of the Agreements.

15 15. MGA's current outstanding balance owed to O'Melveny for services rendered and
16 costs incurred is \$10,210,397.47, plus interest.

17 16. As a result of MGA's failure to pay its outstanding fee and cost obligations to
18 O'Melveny, among other things, O'Melveny withdrew as counsel to MGA in connection with all
19 matters described above and terminated its attorney-client relationship with MGA.

20 17. O'Melveny thereafter diligently assisted MGA and its new counsel, Skadden, Arps,
21 Slate, Meagher & Flom LLP ("Skadden"), in transferring the representation of MGA in those matters,
22 fully enabling them to try the case adverse to Mattel effectively (trial did not commence until May
23 27, 2008, more than 7 months after O'Melveny's withdrawal), and later assisting the counsel who
24 replaced Skadden.

25 18. Beginning on or about August 20, 2008, and continuing through the date of the filing
26 this Complaint, MGA and O'Melveny have agreed to toll all applicable statutes of limitation on the
27 claims asserted herein.

28

1 **FIRST CAUSE OF ACTION**

2 (Breach of Contract Against All Defendants)

3 19. O'Melveny hereby incorporates by reference each and every allegation set forth in
4 paragraphs 1 through 18, inclusive, and realleges them as if they were fully set forth herein.

5 20. O'Melveny has duly performed or satisfied all conditions, promises and obligations
6 required to be performed or satisfied by it in accordance with the terms and conditions of the
7 Agreements.

8 21. Despite repeated requests to do so, Defendants have failed to complete payment to
9 O'Melveny for legal services it has performed and the costs it has advanced, thereby breaching the
10 parties' Agreements.

11 22. As a direct and proximate result of Defendants' breach of the Agreements, O'Melveny
12 has suffered damages in an amount to be proven at trial.

13 **SECOND CAUSE OF ACTION**

14 (Account Stated Against All Defendants)

15 23. O'Melveny hereby incorporates by reference each and every allegation set forth in
16 paragraphs 1 through 18, inclusive, and realleges them as if they were fully set forth herein.

17 24. During the course of its representation of MGA and others, O'Melveny submitted
18 regular billing statements to MGA detailing the legal fees for services rendered and cost incurred by
19 O'Melveny.

20 25. O'Melveny has requested that Defendants pay these sums. However, Defendants have
21 refused, and continue to refuse, to pay O'Melveny for these services rendered and costs incurred.

22 26. As a direct and proximate result of Defendants' failure to pay O'Melveny for the
23 services rendered and costs incurred, O'Melveny has suffered damages in an amount to be proven at
24 trial.

25 **THIRD CAUSE OF ACTION**

26 (For Services Rendered Against All Defendants)

27 27. O'Melveny hereby incorporates by reference each and every allegation set forth in
28 paragraphs 1 through 18 inclusive, and realleges them as if they were fully set forth herein.

1 28. O'Melveny has performed legal services and incurred costs for MGA and others at
2 MGA's request.

3 29. Defendants promised to pay O'Melveny for the legal services to be performed and the
4 costs to be incurred at MGA's request.

5 30. O'Melveny has asked that Defendants pay these sums. However, Defendants have
6 refused, and continue to refuse, to pay O'Melveny for these services rendered and costs incurred.

7 31. As a direct and proximate result of Defendants' failure to pay O'Melveny the
8 reasonable value for the legal services rendered and costs incurred, O'Melveny has suffered damages
9 in an amount to be proven at trial.

10 **FOURTH CAUSE OF ACTION**

11 (Quantum Meruit Against All Defendants)

12 32. O'Melveny hereby incorporates by reference each and every allegation set forth in
13 paragraphs 1 through 18, inclusive, and realleges them as if they were fully set forth herein.

14 33. O'Melveny has performed legal services and incurred costs for MGA and others at
15 Defendants' request.

16 34. Defendants promised to pay O'Melveny the reasonable value of the legal services to
17 be performed and the costs to be incurred at their request.

18 35. O'Melveny has requested payment from Defendants for the reasonable value of the
19 services O'Melveny has performed and the reasonable value of the costs it has incurred. However,
20 Defendants have refused, and continue to refuse, to pay O'Melveny for these services rendered and
21 costs incurred.

22 36. As a direct and proximate result of Defendants' failure to pay O'Melveny for the legal
23 services rendered and the costs incurred, O'Melveny has suffered damages in an amount to be proven
24 at trial.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, O'Melveny prays for judgment against Defendants as follows:

- 27 1. For damages in the amount of \$10,210,397.47;
28 2. For prejudgment interest at the maximum rate allowed by law;

- 1 3. For costs of suit incurred herein, including reasonable attorneys' and experts' fees; and
2 4. For such other and further relief as the Court may deem just and proper.

3 DATED: July 13, 2010

GIBSON, DUNN & CRUTCHER LLP

and

KINSELLA, WEITZMAN, ISER, KUMP &
ALDISERT LLP

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8 By:  _____

Kevin S. Rosen

9
10 Attorneys for Plaintiff,
O'Melveny & Myers LLP

11
12 **JURY DEMAND**

13 Plaintiff O'Melveny & Myers LLP demands a trial by jury.

14 DATED: July 13, 2010

GIBSON, DUNN & CRUTCHER LLP

and

KINSELLA, WEITZMAN, ISER, KUMP &
ALDISERT LLP

17
18
19 By:  _____

Kevin S. Rosen

20
21 Attorneys for Plaintiff,
O'Melveny & Myers LLP