

RECD S.E.C.  
JAN 26 1977

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Associate General Counsel  
2 Irving H. Picard  
Assistant General Counsel  
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FILED

JAN 24 3 59 PM '77  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
BY \_\_\_\_\_

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9 Securities and Exchange Commission  
Suite 1710  
10 10960 Wilshire Boulevard  
Los Angeles, California 90024  
11 Telephone: (213) 984-0011

12 Attorneys for Defendants Securities and Exchange Commission,  
Roderick M. Hills, Philip A. Loomis, Jr., John R. Evans,  
and Irving M. Pollack, Stanley Sporkin, Irwin M. Borowski,  
13 James G. Mann, and Ralph Erickson

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15 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
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17 )  
18 ) ELLIOT HANDLER, RUTH HANDLER,  
SEYMOUR M. ROSENBERG,  
19 ) Plaintiffs,  
20 ) v.  
21 ) SECURITIES AND EXCHANGE COMMISSION;  
RODERICK M. HILLS, PHILIP A.  
22 ) LOOMIS, JR., JOHN R. EVANS, and  
IRVING M. POLLACK, as Commissioners of the  
23 ) SEC; STANLEY SPORKIN, Individually and as  
Director, Division of Enforcement, SEC;  
24 ) IRWIN M. BOROWSKI, Individually and as  
Associate Director, Division of Enforce-  
25 ) ment, SEC; JAMES G. MANN, Individually  
and as Special Counsel, SEC; RALPH H.  
26 ) ERICKSON, Individually and as Assistant  
Administrator, Enforcement Division, Los  
27 ) Angeles Regional Office (Region 7), SEC;  
UNITED STATES DISTRICT COURT FOR THE  
28 ) CENTRAL DISTRICT OF CALIFORNIA;

CIVIL No. 77-0067-<sup>FW</sup>~~ARG~~  
DEFENDANTS SECURITIES AND  
EXCHANGE COMMISSION, AND ITS  
COMMISSIONERS AND STAFF  
STATEMENT OF MATERIAL FACTS  
AS TO WHICH THERE ARE  
NO GENUINE ISSUES AND  
CONCLUSIONS OF LAW

1 EDWARD H. LEVI, as Attorney General of )  
 2 the United States; WILLIAM D. KELLER, as )  
 3 United States Attorney for the Central )  
 4 District of California; )  
 5 Defendants. )

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6 In lieu of proposed findings of fact required by Local Rule 3(g), de-  
 7 fendants Securities and Exchange Commission, and its Commissioners and  
 8 staff will rely on the stipulated fact statement being prepared by their  
 9 counsel and counsel for the plaintiffs which is expected to be submitted  
 10 to the Court shortly.

11 CONCLUSIONS OF LAW

12 1. This Court has no subject-matter jurisdiction.

13 2. This action by plaintiffs (Elliot and Ruth Handler and Seymour  
 14 M. Rosenberg) to suppress evidence is premature and must await a grand  
 15 jury indictment and subsequent criminal prosecution.

16 3. As a court of equity, this Court will not grant relief to plain-  
 17 tiffs because they have been guilty of laches.

18 4. This Court cannot grant the relief sought by plaintiffs in this  
 19 action because they seek to attack collaterally a final judgment entered  
 20 in another action.

21 5. The appointment of a Special Counsel as ancillary relief in an  
 22 enforcement action brought by the Securities and Exchange Commission,  
 23 pursuant to Section 21(d) of the Securities Exchange Act, 15 U.S.C. 78u(d),  
 24 is appropriate remedial relief to protect public investors.

25 6. The Special Counsel and Special Auditor in Securities and Exchange  
 26 Commission v. Mattel, Inc., were representatives of Mattel and did not  
 27 represent a delegation of the authority or functions of the Commission.

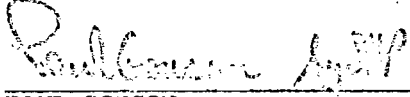
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1 7. Plaintiffs fail to state a claim upon which this Court can grant  
2 relief.


3 8. Plaintiffs fail to state any material facts as to which there are  
4 genuine issues.

5 9. Defendants Securities and Exchange Commission, and its Commissioners  
6 and staff are entitled to a judgment as a matter of law.


7 Respectfully submitted,

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9 PAUL GONSON  
Associate General Counsel

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11 IRVING H. PICARD  
Assistant General Counsel

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13 HOWARD B. SCHERER  
Attorney

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15 Securities and Exchange Commission  
16 500 North Capitol Street  
17 Washington, D.C. 20549  
Telephone: (202) 755-1238

18 Dated: January 21, 1977

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1 CERTIFICATE OF SERVICE

2  
3 I HEREBY CERTIFY AS FOLLOWS:

4 I am regularly employed in the office of the U.S. Secu-  
5 rities and Exchange Commission as an attorney and am a member of  
6 the bar of this Court. My business address is 10960 Wilshire  
7 Boulevard, Suite 1710, Los Angeles, California. I caused the  
8 foregoing:

9 (1) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE  
10 MOTION OF THE DEFENDANTS SECURITIES AND EXCHANGE COM-  
11 MISSION, AND ITS COMMISSIONERS AND EMPLOYEES TO DISMISS  
12 OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT; and

13 (2) DEFENDANTS SECURITIES AND EXCHANGE COMMISSION, AND ITS  
14 COMMISSIONERS AND STAFF STATEMENT OF MATERIAL FACTS AS  
15 TO WHICH THERE ARE NO GENUINE ISSUES AND CONCLUSIONS OF  
16 LAW

17 to be served by hand delivery by January 22, 1977 to the following:

18 R. Stan Mortenson, Esq.  
19 Miller, Cassidy, Larrella & Levin  
20 2555 M Street, N.W.  
Suite 500  
Washington, D.C. 20037

21 Charles S. Battles, Jr., Esq.  
22 Gibson, Dunn & Crutcher  
9601 Wilshire Blvd.  
23 Los Angeles, California 90210


24 Attorneys for plaintiffs, Eliot Handler and Ruth Handler

25 Edward M. Medvene, Esq.  
26 Mitchell, Silberberg & Krupp  
1800 Century Park East  
Suite 800  
27 Century City, California 90067

28 Attorneys for Plaintiff Seymour M. Rosenberg

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Dated: January 24, 1977

  
Charles R. Hartman  
Attorney for Defendants

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and Irving M. Pollack, Stanley Sporkin, Irwin M. Borowski,  
James G. Mann, and Ralph Erickson

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELLIOT HANDLER, RUTH HANDLER,  
SEYMOUR M. ROSENBERG,

Plaintiffs,

v.

SECURITIES AND EXCHANGE COMMISSION;  
RODERICK M. HILLS, PHILIP A.  
LOOMIS, JR., JOHN R. EVANS, and  
IRVING M. POLLACK, as Commissioners of the  
SEC; STANLEY SPORKIN, Individually and as  
Director, Division of Enforcement, SEC;  
IRWIN M. BOROWSKI, Individually and as  
Associate Director, Division of Enforce-  
ment, SEC; JAMES G. MANN, Individually  
and as Special Counsel, SEC; RALPH H.  
ERICKSON, Individually and as Assistant  
Administrator, Enforcement Division, Los  
Angeles Regional Office (Region 7), SEC;  
UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA;

CIVIL No. 77-0067 WPG

AFFIDAVIT OF GEORGE A.  
FITZSIMMONS, SECRETARY  
OF THE SECURITIES AND  
EXCHANGE COMMISSION

1 EDWARD H. LEVI, as Attorney General of )  
2 the United States; WILLIAM D. KELLER, as )  
3 United States Attorney for the Central )  
4 District of California; )  
5 )  
6 Defendants. )

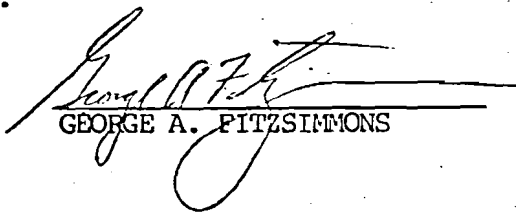
7  
8 City of Washington )  
9 ) SS:  
10 District of Columbia )

11 George A. Fitzsimmons, being duly sworn, deposes and says:

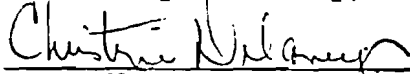
12 1. I am the Secretary of the Securities and Exchange Commission  
13 and as such I am responsible to the Commission for the preparation and  
14 maintenance of the minute record of all official actions of the Commission.  
15 I also have responsibility for authenticating official documents of the  
16 Commission. 17 CFR 200.13.

17 2. I have caused a diligent search to be conducted of the permanent  
18 files maintained by my Office relating to official acts of the Commission  
19 concerning the investigation with respect to Mattel, Inc. (File No. HO-688)  
20 and official actions of the Commission taken as a result of that investigation.  
21 Contained in the Commission's official minute book is a minute, dated  
22 November 13, 1975, relating to the Commission's referral to the Department  
23 of Justice, of the Commission's files in SEC v. Mattel, Inc., as reflected  
24 in the copy of that minute as attached hereto, and based upon my search,  
25 that is the only minute of the Commission relating to the aforesaid matter.

26 3. The document attached hereto is an exact photocopy of the extract  
27 in the Commission's official minute book.

28  
  
GEORGE A. FITZSIMMONS

Sworn to and subscribed before me  
this 27<sup>th</sup> day of January, 1977

  
NOTARY PUBLIC

MEETING OF THE SECURITIES AND EXCHANGE COMMISSION

Thursday, November 13, 1975 - 10:00 A.M.

- - -

Consideration was given to the recommendation of the Division of Enforcement that the Commission authorize the referral of its files and the Reports of the Special Counsel and Special Auditor in the matter of Mattel, Inc. (File HO-688) to the Department of Justice for possible criminal prosecution.

The Commission approved the recommendation.

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