

Appeal Nos. 11-55863, 11-56034

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LAURA SIEGEL LARSON,
Plaintiff, Counterclaim-Defendant, Appellant, and Cross-Appellee,

v.

WARNER BROS. ENTERTAINMENT INC. AND DC COMICS,
Defendants, Counterclaimants, Appellees, and Cross-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
THE HONORABLE OTIS D. WRIGHT II, JUDGE
CASE No. CV-04-8400 ODW (RZX)

**UNOPPOSED MOTION BY CROSS-APPELLANTS AND APPELLEES
WARNER BROS. ENTERTAINMENT INC. AND DC COMICS
TO EXCEED WORD LIMITATION;
DECLARATION OF MATTHEW T. KLINE IN SUPPORT THEREOF**

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Pursuant to Federal Rules of Appellate Procedure 27, 28.1, and 32 and this Court's Rules 27-1 and 32-2, cross-appellants and appellees Warner Bros. Entertainment Inc. and DC Comics ("DC") move to file a combined brief on cross-appeal not exceeding 20,000 words. As shown in the accompanying declaration, counsel was diligent in preparing as concise a brief as possible, but because of the volume and complexity of the record, the combined appeals, and the number of issues and sub-issues presented by the district court orders under review, there is "substantial need" for the additional space requested. 9th Cir. R. 32-2.

DC recognizes that motions seeking additional space generally are "not favored," *id.*, and are not appropriate in the ordinary case. This case is far from ordinary. First, the stakes in the case are high, as the dispute is over ownership of copyrights in the iconic character Superman. The copyrights have substantial economic value, as signified in part by the settlement agreement involved in one of the many questions raised on appeal—a settlement that would have afforded (and still would afford) appellant and cross-appellee Laura Siegel Larson tens of millions of dollars, before she repudiated it in search of even more.

Second, the issues decided by the district court and raised in the appeal and cross-appeal are based on an extensive factual and procedural record developed during seven years of litigation, as detailed in the attached Declaration. On review are over 225 pages of district court orders concerning two cross-motions for

summary judgment, two cross-motions for reconsideration and/or clarification, briefing on seven additional issues ordered by the district court following the order on summary judgment, and a contested motion to certify certain claims as final under Rule 54(b) of the Federal Rules of Civil Procedure. These voluminous orders raise a significant number of issues, which cannot be addressed adequately under the space limitations applicable in the usual case.

For these reasons, despite counsel's diligent efforts to present the issues on appeal concisely, the additional space is necessary to ensure that DC's brief fairly addresses the relevant factual and legal issues involved in this important case, and is adequately helpful to the Court's consideration of those issues.

For the reasons stated, DC's motion should be granted. Larson has indicated that she does not oppose DC's request.

Dated: March 23, 2012

O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli
Attorneys for Warner Bros.
Entertainment Inc. and DC Comics

DECLARATION OF MATTHEW T. KLINE

I, Matthew T. Kline, submit this declaration in support of DC's Unopposed Motion To Exceed Word Limitation:

1. I am a partner in the law firm of O'Melveny & Myers LLP and one of the authors of DC's brief on cross-appeal.

2. This appeal involves an appeal by plaintiff Laura Siegel Larson (Appeal No. 11-55863) and a cross-appeal by DC (Appeal No. 11-56034). Larson, an heir of Superman co-creator Jerome Siegel, seeks to "recapture" copyrights in certain early Superman works under the Copyright Act's termination provisions. One basic question raised by Larson's claims is whether the works at issue were "made for hire" under the 1909 Copyright Act, in which case they are not subject to termination. In addition to contending that all the works at issue were made-for-hire, DC asserted multiple affirmative defenses and counterclaims in response to Larson's claims below.

3. The district court held on summary judgment that almost all of the works at issue were works-for-hire and thus not subject to termination, but that a small number of works were not made-for-hire and thus were subject to termination. Larson's appeal challenges the court's adverse work-for-hire rulings. DC's cross-appeal challenges the order as to those works held subject to termination, and also challenges other rulings made by the court on dispositive,

threshold issues: (1) that a 2001 agreement settling all claims by Larson with respect to the Superman property is unenforceable; and (2) that Larson's claims were not barred by the Copyright Act's statute-of-limitations. In addition, DC contends that the Court lacks jurisdiction as to Larson's appeal of the work-for-hire partial summary judgment ruling. DC previously moved to dismiss Larson's appeal on that basis, but the motion was denied by the Appellate Commissioner without prejudice to re-raising the issue in merits briefing. Finally, DC challenges one aspect of the district court's ruling concerning the contents of certain "Promotional Announcements."

4. Larson's appeal and DC's cross-appeal have been scheduled in a four brief cross-appeal sequence. On December 22, 2011, Larson filed a First Brief on Cross-Appeal of nearly 14,000 words addressing only the work-for-hire issues presented by her own appeal. In its Second Brief on Cross-Appeal, DC has not only responded to the work-for-hire issues presented by Larson's first brief, but has addressed the numerous other issues presented by DC's cross-appeal, as well as the jurisdictional problem with Larson's appeal.

5. Under Federal Rule of Appellate Procedure 28.1(e)(2)(B) and this Court's June 20, 2011, order (Docket No. 1-2), DC is entitled to file a brief not exceeding 16,500 words. DC requests permission to file a single opening and

answering brief not exceeding 20,000 words. Larson does not oppose this request, and there is good cause for granting it, as detailed below.

6. First, this case, which was filed in 2004, has a complex factual and procedural history covering over seven years. The district court resolved two cross-motions for summary judgment, two cross-motions for reconsideration and/or clarification, briefing on seven additional issues requested by the district court, and motion for certification under Rule 54(b) of the Federal Rules of Civil Procedure. Both parties in the district court sought and received extensions of the page limits for their briefs, resulting in the filing of hundreds of pages of briefing in the district court on the issues addressed in these appeals. The district court's orders on these issues themselves exceed 225 pages.

7. Second, and relatedly, in order to give this Court an adequate understanding of the issues here, DC's brief must detail the factual background of the creation of the Superman comic in the 1930s, DC's employment of the artists who created Superman, the history of litigation involving the Superman copyrights in the 1940s, 1960s, and 1970s, the procedural history of Larson's termination notices, the extensive history of negotiations leading to the 2001 settlement agreement, and Larson's decision to repudiate that agreement and sue. Those facts cannot be adequately portrayed in overly summary fashion.

8. Third, DC's cross-appeal contends in part that the district court's rulings overlooked substantial evidence in DC's favor, and/or misinterpreted evidence unfavorably to DC, contrary to the summary judgment standard. The only way DC can support those arguments fairly is to set forth the substantial record evidence that was overlooked or misinterpreted by the court. Given the number and complexity of relevant facts and narrative, such analysis necessarily requires substantial length. Similarly, in several instances the district court cited multiple grounds for its rulings, each of which must be addressed by DC.

9. Fourth, counsel has exercised diligence in attempting to address all the foregoing factual and legal matters succinctly, but fairly and fully. Despite those efforts, counsel has been unable to reduce the brief to under 16,500 words. Counsel therefore submits that, to address the appeal and cross-appeal issues adequately, DC has a "substantial need" to file a brief exceeding the usual 16,500-word limit, but not to exceed 20,000 words.

10. DC has contacted Larson's counsel, who advises that Larson does not oppose this motion, as long as she is afforded a reciprocal extension in her final brief, to which DC agreed (subject to the Court's approval, of course).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on March 23, 2012.

/s/ Matthew T. Kline
Matthew T. Kline