

**APPELLATE CASE NO. 11-55863;  
CROSS-APPEAL CASE NO. 11-56034**

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

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LAURA SIEGEL LARSON

*Plaintiff, Counterclaim-Defendant, Appellant, and Cross-Appellee.*

v.

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

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**APPELLANT LAURA SIEGEL LARSON'S UNOPPOSED MOTION  
TO EXCEED WORD LIMITATIONS; DECLARATION OF MARC TOBEROFF IN  
SUPPORT THEREOF**

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Appeal From The United States District Court for the Central District  
of California,  
Case No. CV-04-8400 ODW (RZx), Hon. Otis D. Wright II

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TOBEROFF & ASSOCIATES, P.C.

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Laura Siegel Larson, individually and  
as personal representative of the Estate  
of Joanne Siegel*

**APPELLANT LAURA SIEGEL LARSON’S UNOPPOSED MOTION  
TO EXCEED WORD LIMITATION**

Pursuant to Federal Rules of Appellate Procedure 27, 28.1, and 32 and this Circuit Rules 27-1 and 32-2, Plaintiff-Appellant/Cross-Appellee Laura Siegel Larson (“Plaintiff”) respectfully moves for leave to file a Reply brief not exceeding 17,500 words.

Appellee/Cross-Appellant Defendants Warner Bros. Entertainment Inc. and DC Comics (“Warner”) moved to file an over-sized opening and answering brief of up to 3,500 additional words, for a total of 20,000. Due to the complex nature of this case, Plaintiff agreed not to oppose it, provided that Warner agreed that it would not oppose a motion by Plaintiff for an equivalent 3,500-word extension, to which Warner agreed. *See* Declaration Of Marc Toberoff In Support Of Appellant Laura Siegel Larson’s Unopposed Motion To Exceed Word Limitation (“Toberoff Decl.”), ¶¶ 3, 9; Ex. A.

This Court granted Warner’s motion. Docket No. 37.

As shown in the accompanying declaration, counsel diligently prepared as concise a brief as possible, but because of (1) the volume and complexity of the record, (2) the combined appeals, (3) the number of issues and sub-issues presented by the district court orders under review, (4) Warner’s filing of an oversized brief, and (5) Warner’s improper inclusion of 166 pages in its excerpts of

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record that were not before the District Court and new arguments based thereon, there is a “substantial need” for the additional space requested. 9th Cir. R. 32-2; Toberoff Decl. ¶¶ 4-8.

Plaintiff appreciates that motions seeking additional space generally are “not favored” (9th Cir. Rule 32-2), and are not appropriate in the ordinary case. The stakes in this case, the multiple issues presented as to numerous different “Superman” works, and the extensive factual and procedural record, developed during seven years of litigation, are far from ordinary. Toberoff Decl., ¶ 2. On review are over 225 pages of District Court orders concerning two sets of cross-motions for summary judgment. *Id.* Defendants have also improperly expanded the record on appeal, forcing Siegel to address documents and arguments that were not before the district court. *See* Toberoff Decl., ¶ 4.

For these reasons, despite counsel’s diligent efforts to present the issues on appeal concisely, the additional space is necessary to ensure that Plaintiff’s reply brief fairly addresses the relevant factual and legal issues involved in this case, and is adequate to assist the Court’s consideration of those issues.

For the reasons stated above, Plaintiff’s motion should be granted. As set forth above, Warner indicated that it does not oppose Plaintiff’s request for a reciprocal 3,500 word extension.

Dated: May 24, 2012

TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff

Marc Toberoff

Attorneys for Plaintiff-Appellant, Laura Siegel  
Larson

## **DECLARATION OF MARC TOBEROFF**

1. I am a partner at the law firm of Toberoff & Associates, counsel of record for Appellant/Cross-Appellee Laura Siegel Larson (“Plaintiff”) in the above-captioned action. I am a member in good standing of the State Bar of California and am admitted to practice before this Court. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. This appeal by Plaintiff (Appeal No. 11-55863) and the cross-appeal by Defendants Warner Bros. Entertainment Inc. and DC Comics (collectively “Warner”) (Appeal No. 11-56034) focuses on the original copyrights to the iconic Superman character. The appeals arise from over 225 pages of district court orders including orders concerning two cross-motions for summary judgment and two cross-motions for reconsideration and/or clarification. Over seven years of litigation, a large record has developed that extends back to Jerome Siegel’s co-creation of Superman in the 1930s.

3. Plaintiff did not oppose Warner’s motion to file an over-sized opening and answering brief of up to 3,500 additional words (for a total of 20,000 words) due to the complex nature of this case, provided that Warner would not oppose this motion by Plaintiff for an equivalent 3,500 word extension. Warner

agreed. True and correct copies of the parties' email exchange are attached hereto as Exhibit "A."

4. On March 23, 2012, Warner filed an over-sized opening and answering brief containing 19,862 words. Warner also filed Supplemental Excerpts of Records (Docket 31) on March 26, 2012 that improperly included 166 pages of documents that were not part of the District Court's record, and Warner's brief makes numerous new arguments based on these extra-record documents that it did not make below, which Plaintiff must also address. These references and documents are subject to a Motion to Strike.

5. Under this Court's June 20, 2011, order (Docket No. 1-2), Plaintiff is entitled to file an answering and reply brief of up to 14,000 words. Plaintiff respectfully requests permission to file a single answering and reply brief not to exceed 17,500 words.

6. Plaintiff's brief must cover numerous issues. For instance, Plaintiff must address in this brief whether six different sets of work(s) (*Action Comics, No. 1, Action Comics No. 4/Superman No. 1, Action Comics Nos.2-3, 5-6, the initial two weeks of "Superman" newspaper strips, the subsequent newspaper strips, and Action Comics Nos. 7-56/Superman Nos.1-6*) are "works-for-hire" under the 1909 Copyright Act. Furthermore, Plaintiff must address numerous issues impacting the



## Pablo Arredondo

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**From:** Seto, Cassandra [cseto@OMM.com]  
**Sent:** Thursday, March 22, 2012 12:52 PM  
**To:** Keith Adams  
**Cc:** Kline, Matthew; Petrocelli, Daniel; Tokoro, Jason; Pablo Arredondo; Marc Toberoff  
**Subject:** RE: Larson v. Warner Bros. Entm't, et al., Appeal No. 11-55863, Appeal No. 11-56034

Keith,

On #1, we will not oppose a motion seeking a reciprocal extension for Ms. Larson's opposition/reply brief.

On #2, as you know, Ms. Larson and her co-defendants in *Pacific Pictures* have already acknowledged that the appellate proceedings are "related" in their Statements of Related Cases. As our letter states, DC is moving the Court to assign the cases to the same panel in the interest of efficiency, expediency, and in accordance with Ninth Circuit procedure.

On #3, please let us know your grounds for opposing.

Thanks,

Cassie

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**From:** Keith Adams [<mailto:kgadams@ipwla.com>]  
**Sent:** Thursday, March 22, 2012 11:04 AM  
**To:** Seto, Cassandra  
**Cc:** Kline, Matthew; Petrocelli, Daniel; Tokoro, Jason; Pablo Arredondo; Marc Toberoff  
**Subject:** Re: Larson v. Warner Bros. Entm't, et al., Appeal No. 11-55863, Appeal No. 11-56034

Counsel:

As to Motion #1, concerning DC's request for an extension of up to 3,500 words for its principal/opposition brief, we will not oppose that motion provided that DC agrees that it will not oppose a motion by Plaintiff for a reciprocal extension of up to 3,500 words for her opposition/reply brief.

As to Motion #2, concerning DC's request that all of the currently-pending appeals be deemed related, we reserve comment until we see the filed motion.

As to Motion #3, concerning DC's motion to lodge a copy of Detective Comics #15, we will oppose that motion.

All of Plaintiff's rights are reserved.

Keith G. Adams  
Toberoff & Associates, P.C.  
22337 Pacific Coast Highway #348  
Malibu, California 90265  
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**From:** "Seto, Cassandra" <[cseto@OMM.com](mailto:cseto@OMM.com)>  
**To:** "[mtoberoff@ipwla.com](mailto:mtoberoff@ipwla.com)" <[mtoberoff@ipwla.com](mailto:mtoberoff@ipwla.com)>; "[kgadams@ipwla.com](mailto:kgadams@ipwla.com)" <[kgadams@ipwla.com](mailto:kgadams@ipwla.com)>; "Pablo Arredondo ([parredondo@ipwla.com](mailto:parredondo@ipwla.com))" <[parredondo@ipwla.com](mailto:parredondo@ipwla.com)>  
**Cc:** "Petrocelli, Daniel" <[DPetrocelli@OMM.com](mailto:DPetrocelli@OMM.com)>; "Kline, Matthew" <[MKline@OMM.com](mailto:MKline@OMM.com)>; "Hacker, Jonathan" <[JHacker@OMM.com](mailto:JHacker@OMM.com)>  
**Sent:** Tuesday, March 20, 2012 4:26 PM  
**Subject:** Larson v. Warner Bros. Entm't, et al., Appeal No. 11-55863, Appeal No. 11-56034

Dear Counsel,

Please see the attached letter.

**Cassandra L. Seto**  
**O'Melveny & Myers LLP**  
1999 Avenue of the Stars, Suite 700, Los Angeles, California 90067  
Telephone: 310.246.6703 | Facsimile: 310.246.6779

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rules of Appellate Procedure 27(d) and 32(a), I certify that the appellant Laura Siegel Larson's brief is proportionately spaced, has a typeface of 14 points or more, and does not exceed 20 pages.

Dated: May 24, 2012

TOBEROFF & ASSOCIATES, P.C.

By: /s/ Marc Toberoff

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Marc Toberoff

Attorneys for Laura Siegel Larson

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served electronically by the Court's ECF system and by first class mail on those parties not registered for ECF pursuant to the rules of this court.

Dated: May 24, 2012

TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff

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Marc Toberoff

Attorneys for Appellant, Laura Siegel Larson