

# EXHIBIT A

**NOTICE OF TERMINATION OF TRANSFER  
COVERING EXTENDED RENEWAL TERM**

TO: Time Warner Inc.  
c/o Gerald M. Levin  
Chairman of the Board & C.E.O.  
75 Rockefeller Plaza  
New York, NY 10019

Time Warner  
Entertainment Company, L.P.  
75 Rockefeller Plaza  
New York, NY 10019

Warner Communications Inc.  
75 Rockefeller Plaza  
New York, NY 10019

Warner Bros. Inc.  
c/o Robert Daly and Terry Semel  
Co-Chairmen of the Board & Co-C.E.O.  
4000 Warner Boulevard  
Burbank, CA 91522

DC Comics Inc.  
c/o Jenette Kahn  
President & Editor In Chief  
1700 Broadway  
New York, NY 10019

DC Comics,  
a New York General Partnership  
c/o Paul Levitz  
Executive V.P. & Publisher  
1700 Broadway  
New York, NY 10019

Warner Bros. Television  
c/o Tony Jonas, President  
4000 Warner Boulevard  
Burbank, CA 91522

Warner Bros. Consumer Products  
c/o Dan Romanelli, President  
4000 Warner Boulevard  
Burbank, CA 91522

Warner Bros. Worldwide Licensing  
c/o George Jones, President  
4000 Warner Boulevard  
Burbank, CA 91522

Warner Music Group  
c/o Robert Daly and Terry Semel  
Co-Chairmen  
75 Rockefeller Plaza  
New York, NY 10019

Dark Horse Publications  
c/o Michael Richardson, President  
10956 S.E. Main St.  
Milwaukie, OR 97222

Marvel Entertainment Group, Inc.  
c/o Scott Sassa, C.E.O.  
387 Park Ave. South  
New York, NY 10016

Hasbro, Inc.  
c/o Alan Hassenfeld, C.E.O.  
1027 Newport Ave.  
Pawtucket, RI 02861

Fleer/Skybox International  
c/o Ed Feeley, President & C.E.O.  
1120 Route 73  
Mt. Laurel, NJ 08054

Golden Books Publishing  
1220 Mound Ave.  
Racine, WI 53404

Inverse Ink  
TAO Research Corporation  
c/o Lingtao Wang, President  
785A Castro Street  
Mountain View, CA 94041

PLEASE TAKE NOTICE that pursuant to Section 304(c) of the Copyright Law (Title 17, U.S.C.) and the regulations issued thereunder by the Register of Copyrights, 37 C.F.R. section 201.10, the undersigned Joanne Siegel and Laura Siegel Larson, being the persons who own an interest sufficient to terminate transfers pursuant to said statutory provisions, hereby terminate the grant of the transfer of renewal copyright(s) (to the extent of author Jerome Siegel's share in the ownership of the renewal copyright(s)) made in a certain agreement between Jerome Siegel and Joe Shuster and Detective Comics, Inc. executed on or about March 1, 1938, and the undersigned set forth in connection therewith the following:

1. The names and addresses of the grantees and/or successors in title whose rights are being terminated are as follows: Time Warner Inc., 75 Rockefeller Plaza, New York, NY 10019; Time Warner Entertainment Company, L.P., 75 Rockefeller Plaza, New York, NY 10019; Warner Communications Inc., 75 Rockefeller Plaza, New York, NY 10019; Warner Bros. Inc., 4000 Warner Boulevard, Burbank, CA 91522; DC Comics Inc., 1700 Broadway, New York, NY 10019; DC Comics, a New York General Partnership, 1700 Broadway, New York, NY 10019; Warner Bros. Television, 4000 Warner Boulevard, Burbank, CA 91522; Warner Bros. Consumer Products, 4000 Warner Boulevard, Burbank, CA 91522; Warner Bros. Worldwide Licensing, 4000 Warner Boulevard, Burbank, CA 91522; Warner Music Group, 75 Rockefeller Plaza, New York, NY 10019; Dark Horse Publications, 10956 S.E. Main St., Milwaukie, OR 97222; Marvel Entertainment Group, Inc., 387 Park Ave. South, New York, NY 10016; Hasbro, Inc., 1027 Newport Ave., Pawtucket, RI 02861; Fleer/Skybox International, 1120 Route 73, Mt. Laurel, NJ 08054; Golden Books Publishing, 1220 Mound Ave., Racine, WI 53404; and Inverse Ink, TAO Research

Corporation, 785A Castro Street, Mountain View, CA 94041. Pursuant to 37 C.F.R. Section 201.10(d), service of this notice is being made by first class mail to the above grantees or successors at the addresses shown.

2. Each work to which this notice of termination applies is as follows: The title of the original copyrighted work to which this Notice of Termination applies is SUPERMAN, an illustrated comic book story constituting a front cover and pages 1-13, inclusive, in the body of Action Comics, Vol. 1, No. 1, June, 1938 issue, publication date April 18, 1938 (which is also the date that copyright was originally secured in this work), Copyright Registration No. B379787. This work was written by Jerome Siegel and illustrated by Joe Shuster. Renewal for the work was made June 1, 1965, in the name of National Periodical Publications, Inc. claiming as proprietor of copyright, renewal registration No. R362188. The aforesaid work was based upon the following works to which this Notice of Termination also applies: Twenty-four (24) days (i.e., four weeks) of previously unpublished SUPERMAN newspaper comic strips (created c. 1934), also written by Jerome Siegel and illustrated by Joe Shuster; and a seven page synopsis of the last 18 days (i.e., weeks 2, 3, & 4) of said 24 days of strips, also created c. 1934 and written by Jerome Siegel. The remaining works to which this Notice of Termination applies<sup>1</sup> are:

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<sup>1</sup>This Notice of Termination applies to each and every work (in any medium whatsoever, whenever created) that includes or embodies any character, story element, or indicia reasonably associated with SUPERMAN or the SUPERMAN stories, such as, without limitation, Superman, Clark Kent, Lois Lane, Perry White, Jimmy Olsen, Superboy, Supergirl, Lana Lang, Lex Luthor, Mr. MXYZPLK (also known as Mr. MXYZPTLK), Ma and Pa Kent, Steel, the planet Krypton, Kryptonite, Metropolis, Smallville, or the Daily Planet. Every reasonable effort has been made to find and list herein every such SUPERMAN-related work ever created. Nevertheless, if any such work has been omitted, such omission is unintentional and involuntary, and this Notice also applies to each and every such omitted work.

<u>Title</u>	<u>Name of Author<sup>2</sup></u>	<u>Date Copyright Secured<sup>3</sup></u>	<u>Copyright Reg. No.</u>
SUPERMAN story in Comic Book form	Jerome Siegel	Unpublished Work created c. 1933	N/A <sup>4</sup>
Untitled paragraph previewing future SUPERMAN exploits	Jerome Siegel	Unpublished Work created c. 1934	N/A
15 SUPERMAN daily comic strips (12 strips & 3 scripts)	Jerome Siegel	Unpublished Work created c. 1934	N/A
9 page synopsis covering an additional 2 months of daily (at 6 days per week) comic strips of SUPERMAN <sup>5</sup>	Jerome Siegel	Unpublished Work created c. 1934	N/A

<sup>2</sup>Pursuant to 37 C.F.R § 201.10(b)(1)(ii), this Notice includes the name of at least one author of each work to which this notice of termination applies. The listing of any corporation as author of any work is done per the practice shown in Copyright Office records, and is not to be construed as an admission that any given work is or was a work made for hire. Nor is anything else herein to be construed as any such admission.

<sup>3</sup>Regarding works governed by the 1976 Copyright Act as to "Date Copyright Secured," and commencing in 1978, the records of the U.S. Copyright Office list only the year of creation, rather than the day, month, and year of creation. Accordingly, for every registered post-1977 published work whose year of creation is the same as its year of publication, only the specific publication date (month, day, and year) will be given, and the year therein will constitute the year of creation. For every registered post-1977 published work whose year of creation differs from its year of publication, the year of creation will be given (e.g., "DCRE: 1979" [i.e., "Date Created: 1979"]), followed by the specific publication date. For every registered post-1977 unpublished work whose year of creation is the same as its year of registration, only the specific registration date (month, day, and year) followed by the designation "(DREG)" [i.e., "Date Registered"] will be given, and the year therein will constitute the year of creation. For every registered post-1977 unpublished work whose year of creation differs from its year of registration, the year of creation will be given (e.g., "DCRE: 1979"), followed by the specific registration date.

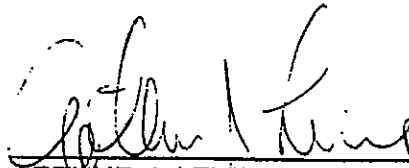
<sup>4</sup>The first four works listed in this table as well as the above-referred 24 days of previously unpublished SUPERMAN newspaper comic strips and seven page synopsis of the last 18 days of said strips were never published or registered, at least not in their original form, so there are no copyright registration numbers for them. Accordingly, under the 1909 Act, copyright in the said works was not (and could not have been) secured prior to April 18, 1938, the date of the first published and registered SUPERMAN work, namely, *Action Comics #1* (described above).

<sup>5</sup>This list of titles/works as part of paragraph number 2 continues through page 550. Paragraph number 3 begins on page 551.

## CERTIFICATE OF INVESTIGATION

I hereby certify that before serving the foregoing document described as NOTICE OF TERMINATION OF TRANSFER COVERING EXTENDED RENEWAL TERM, and pursuant to 37 C.F.R. Section 201.10(d), I caused a reasonable investigation to be made on behalf of Joanne Siegel and Laura Siegel Larson as to the current ownership of the rights being terminated, by commissioning a search of U.S. copyright records, including a search of the records in the U.S. Copyright Office.

31st I declare under penalty of perjury that the foregoing is true and correct. Executed this day of April, 1997, at Washington, DC.



ARTHUR J. LEVINE, Esq.  
FINNEGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, L.L.P.  
1300 "I" Street, N.W.  
Washington, DC 20005  
(202) 408-4000  
Counsel for Joanne Siegel  
and Laura Siegel Larson

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document described as NOTICE OF TERMINATION OF TRANSFER COVERING EXTENDED RENEWAL TERM was served this 2<sup>nd</sup> day of April, 1997, by First Class Mail, postage prepaid, upon the following:

Time Warner Inc.  
c/o Gerald M. Levin  
Chairman of the Board & C.E.O.  
75 Rockefeller Plaza  
New York, NY 10019

Time Warner  
Entertainment Company, L.P.  
75 Rockefeller Plaza  
New York, NY 10019

Warner Communications Inc.  
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Warner Bros. Inc.  
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Co-Chairmen of the Board & Co-C.E.O.  
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c/o Jenette Kahn  
President & Editor In Chief  
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1027 Newport Ave.  
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c/o Ed Feeley, President & C.E.O.  
1120 Route 73  
Mt. Laurel, NJ 08054

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1220 Mound Ave.  
Racine, WI 53404

Inverse Ink  
TAO Research Corporation  
c/o Lingtao Wang, President  
785A Castro Street  
Mountain View, CA 94041

I declare under penalty of perjury that the foregoing is true and correct.



ARTHUR J. LEVINE, Esq.  
FINNEGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, L.L.P.  
1300 "I" Street, N.W.  
Washington, DC 20005  
(202) 408-4000  
Counsel for Joanne Siegel  
and Laura Siegel Larson

# **EXHIBIT B**

1 Marc Toberoff (CA State Bar No. 188547)  
2 Rafael Gomez-Cabrera (CA State Bar No. 229744)  
3 Jeffrey B. Linden (CA State Bar No. 224761)  
4 Nicholas C. Williamson (CA State Bar No. 231124)  
5 LAW OFFICES OF MARC TOBEROFF, PLC  
6 1999 Avenue of the Stars, Suite 1540  
7 Los Angeles, CA 90067  
8 Telephone: (310) 246-3333  
9 Facsimile: (310) 246-3101

10 Attorneys for Plaintiffs  
11 Joanne Siegel and Laura Siegel Larson

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

JOANNE SIEGEL, an individual; and  
LAURA SIEGEL LARSON, an individual,

Plaintiffs,

vs.

WARNER BROS. ENTERTAINMENT  
INC., a corporation; TIME WARNER INC.,  
a corporation; DC COMICS INC., a  
corporation; and DOES 1-10,

Defendants.

Civil Case No. CV 04-8400

**COMPLAINT FOR:**

- [1] DECLARATORY RELIEF RE:  
TERMINATION, 17 U.S.C. § 304(c);
- [2] DECLARATORY RELIEF RE:  
PROFITS;
- [3] DECLARATORY RELIEF RE:  
USE OF "S" CREST;
- [4] ACCOUNTING FOR PROFITS;
- [5] WASTE OF JOINTLY OWNED  
COPYRIGHTS;
- [6] VIOLATION OF LANHAM ACT  
15 U.S.C. § 1125;
- [7] VIOLATION OF CALIFORNIA  
BUSINESS AND PROFESSIONAL  
CODE §§ 17200 *ET SEQ.*

**DEMAND FOR JURY TRIAL**

Plaintiffs JOANNE SIEGEL and LAURA SIEGEL LARSON (hereinafter the  
"Plaintiffs"), by and through their attorney of record, hereby allege as follows:

**JURISDICTION AND VENUE**

1. This is a civil action seeking declaratory relief, accounting for profits, remedies  
for violations of the Lanham Act and violations of California unfair competition laws and

Complaint for Declaratory Relief, Accounting, Lanham Act Violations and Unfair Competition

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related claims arising out of Plaintiffs' termination of prior grants of copyright in and to the original character and work known as "Superman" and subsequent "Superman" works pursuant to the United States Copyright Act of 1976, 17 U.S.C. § 304(c), and defendants' willful misconduct with respect thereto.

2. This Court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to the United States Copyright Act (hereinafter, the “Copyright Act”), 17 U.S.C. § 101 *et al.* and 28 U.S.C. §§ 1331, 1338(a) and 1332 .

3. This Court has supplemental jurisdiction over the related state claims herein in that these claims form part of the same case and controversy as the federal claims herein.

4. This Court has personal jurisdiction over the defendants in that defendants are regularly doing business in the State of California and in this District, and because a substantial part of the relevant acts complained of herein occurred in the State of California and this District.

5. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

## PARTIES

6. Plaintiff JOANNE SIEGEL (hereinafter “Joanne Siegel”) is an individual and citizen of and resides in the State of California, in the County of Los Angeles, and is and at all times has been a citizen of the United States. Joanne Siegel is the widow of famed comic book creator Jerome (a.k.a. “Jerry”) Siegel.

7. Plaintiff LAURA SIEGEL LARSON (hereinafter “Laura Siegel”) is an individual and a citizen of and resides in the State of California, in the County of Los Angeles, and is and at all times has been a citizen of the United States. Laura Siegel is the daughter of Jerome Siegel.

8. Plaintiffs are informed and believe and based thereon allege that defendant WARNER BROS. ENTERTAINMENT INC. (hereinafter “Warner Bros.”) is a corporation organized and existing under the laws of the State of Delaware, which has its principal place

1 of business in Los Angeles County, California. Warner Bros. is a wholly owned subsidiary of  
2 Defendant TIME WARNER INC.

3 9. Plaintiffs are informed and believe and based thereon allege that Defendant DC  
4 COMICS INC. (hereinafter "DC") is a corporation organized and existing under the laws of  
5 the State of New York, which has its principal place of business in the State of New York; and  
6 that DC regularly conducts significant business in the State of California and in the County of  
7 Los Angeles. DC is also a wholly owned subsidiary of defendant Warner Bros.

8 10. Plaintiffs are informed and believe and based thereon allege that on or about  
9 September 30, 1946, the New York corporations, Detective Comics, Inc., Superman, Inc., All  
10 American Comics, Inc., Jolaine Publications, Inc., Wonderwoman Publishing, Inc., Hop  
11 Harrigan Enterprise, Inc., Gainlee Publishing Co., Inc., J.R. Publishing Co., Inc., Worlds Best  
12 Comics, Inc. and Trafalgar Printing Co., Inc. were consolidated into the New York  
13 corporation National Comics Publications, Inc., the name of which was later changed to  
14 National Periodical Publications, Inc., and eventually to DC Comics, Inc.; and further that DC,  
15 Warner Bros. and Time Warner, and/or each of them, are the alleged successor(s)-in-interest  
16 to National Periodical Publications, Inc.

17 11. Plaintiffs are informed and believe and based thereon allege that Defendant  
18 TIME WARNER INC. (hereinafter "Time Warner") is a corporation organized and existing  
19 under the laws of the State of Delaware, which has its corporate headquarters in the State of  
20 New York, and that Time Warner regularly conducts significant ongoing business in the State  
21 of California and in the County of Los Angeles. Time Warner is the parent company of both  
22 Warner Bros. and DC. (Time Warner, Warner Bros. and DC are sometimes collectively  
23 referred to hereinafter as the "Defendants;" and each reference to Defendants shall also refer  
24 to each Defendant).

25 12. Plaintiffs are informed and believe and based thereon allege that Defendant DC  
26 never, or rarely, exploits "Superman," independently of its controlling parent company,  
27 Warner Bros.; that even relatively linear functions such as "Superman" licensing are not  
28 handled directly by DC, but are exploited exclusively through Warner Bros.; that the

1 agreements and other arrangements between Defendants Warner Bros. and DC regarding  
2 "Superman" are not "arms length" agreements, serve primarily Warner Bros.' interests, and  
3 thus, do not reflect the appropriate market values of the copyrights to "Superman," at issue  
4 herein.

5 13. Plaintiffs are informed and believe and based thereon allege that Defendants  
6 Time Warner, Warner Bros. and DC are, and at all times material hereto were, the alter-egos  
7 of each other and there exists and has existed at all times material hereto a unity of interest and  
8 ownership among such Defendants such that any separateness has ceased to exist in that  
9 Defendants, and/or each of them, used assets of the other Defendants, and/or each of them, for  
10 its and/or their separate, individual purposes, and caused valuable assets, property, rights  
11 and/or interests to be transferred to each other without adequate consideration.

12 14. Plaintiffs are informed and believe and based thereon allege that the fictitiously  
13 named Defendants captioned hereinabove as Does 1 through 10, inclusive, and each of them,  
14 were in some manner responsible or legally liable for the actions, damages, events,  
15 transactions and circumstances alleged herein. The true names and capacities of such  
16 fictitiously named defendants, whether individual, corporate, associate, or otherwise are  
17 presently unknown to Plaintiffs, and Plaintiffs will amend this Complaint to assert the true  
18 names and capacities of such fictitiously named Defendants when the same have been  
19 ascertained. For convenience, each reference herein to a named Defendant shall also refer to  
20 the Doe Defendants and each of them.

21 15. Plaintiffs are informed and believe and based thereon allege that each of the  
22 Defendants was the agent, partner, servant, employee, or employer of each of the other  
23 Defendants herein, and that at all times herein mentioned, each of the Defendants was acting  
24 within the course and scope of such employment, partnership and/or agency and that each of  
25 the Defendants is jointly and severally responsible for the damages hereinafter alleged.

26 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

27 16. In 1933 Jerome Siegel conceived the original idea of a cartoon strip featuring a  
28 unique man of superhuman strength and powers who would perform feats of great importance

1 for the public good. Siegel conceived, in essence, the first "superhero" -- an original concept  
2 which embodied our nation's ideals at the Worlds' darkest hour, became a cultural icon and  
3 spawned, what is today, a booming industry. Jerry Siegel entitled his character --  
4 "Superman."

5 17. In or about 1934, Jerome Siegel authored twenty-four days (four weeks) of  
6 "Superman" comic strips intended for newspaper publication, a synopsis of comic strips for  
7 weeks two, three and four, a paragraph previewing future "Superman" exploits and a nine  
8 page synopsis covering approximately two months of daily "Superman" newspaper comic  
9 strips (at six days per week). Plaintiffs are informed and believe and based thereon allege that  
10 these works, though originally unpublished were thereafter included or incorporated in the  
11 early "Superman" comic strips thereafter published from on or about April 18, 1938 to April  
12 13, 1943 (collectively, referred to hereinafter as the "Initially Unpublished Works").

13 18. In or about 1934, Jerome Siegel and the artist, Joe Shuster (hereinafter  
14 collectively, "Siegel and Shuster") co-authored *fifteen* daily "Superman" comic strips,  
15 consisting of one week (six days) of completely inked daily "Superman" comic strips and  
16 three additional six day weeks of "Superman" comic strips in penciled form. (the "1934  
17 Superman Comic Strip"). "Superman" was submitted by Siegel and Shuster to numerous  
18 publishers over the next few years.

19 19. Although "Superman" was not picked up for publication for some time, Siegel  
20 and Shuster did get other features they created into print with the Nicholson Publishing  
21 Company including "Henri Duval" and "Dr. Occult." In a letter dated October 4, 1935, the  
22 company's owner Malcolm Wheeler-Nicholson, wrote to Mr. Siegel expressing an interest in  
23 publishing "Superman" in comic book form but Siegel and Shuster rejected his offer.  
24 Nicholson became involved with a new comic magazine company, Detective Comics, Inc.  
25 (hereinafter, "Detective Comics") and two Siegel and Shuster features, "Slam Bradley" and  
26 "Spy," appeared in "Detective Comics No. 1."

27 20. On or about December 4, 1937, Siegel and Shuster, as independent contractors,  
28 entered into an agreement with Detective Comics (the "1937 Agreement") to continue to

1 produce the comic magazine features, "Slam Bradley" and "The Spy," which agreement  
2 provided, in part, that any new and additional features which Siegel and Shuster produced for  
3 use in a comic magazine were to be first submitted to Detective Comics which reserved the  
4 right to accept or reject same within sixty days.

5 21. One of the early entities to whom Siegel had submitted "Superman" was The  
6 McClure Newspaper Syndicate. In or about early 1938, the head of the syndicate sought  
7 Siegel's permission to forward Siegel and Shuster's 1934 Superman Comic Strip material to  
8 Detective Comics for potential publication in its contemplated new magazine, "Action  
9 Comics." By this time, "Superman" and his miraculous powers had already been completely  
10 developed by Siegel and Shuster.

11 22. In or about January-February 1938, when Detective Comics expressed interest  
12 to Siegel and Shuster in publishing their 1934 Superman Comic Strip in a magazine, Siegel  
13 and Shuster cut and pasted their aforementioned material into more than ninety separate  
14 panels ("Revised 1934 Superman Comic Strip"), so as to render their newspaper strip more  
15 suitable for a magazine layout.

16 23. The "Superman" material described hereinabove, which was the independent,  
17 original creation of Siegel and Shuster, contained virtually all of the signature elements and  
18 characters of the "Superman" mythology and constituted the formula for the continuing  
19 "Superman" series to come. It depicted and narrated the origin of the "Superman" character,  
20 and contained a complete delineation of the literary and pictorial representation of  
21 "Superman," including without limitation, his habits, character, superhuman powers,  
22 appearance, costume, secret identity and attributes, and the sphere of public good "Superman"  
23 was to enhance.

24 24. By an instrument dated March 1, 1938 (hereinafter, the "1938 Grant"), which  
25 had been prepared by Detective Comics, Siegel and Shuster agreed to the publication of their  
26 Revised 1934 Superman Comic Strip by Detective Comics in consideration for the sum of  
27 \$130.

28

1           25.     Thereafter, Detective Comics published Siegel and Shuster's "Revised 1934  
2 Superman Comic Strip" in the "June, 1938" issue of "Action Comics No. 1," which was  
3 issued for sale on April 18, 1938.

4           26.     Action Comics No. 1 and the predecessor materials created solely by Siegel  
5 and Shuster contained the essential elements of "Superman" which continue to this day,  
6 including without limitation, Superman's origin from the distant planet, his "back-story" (sent  
7 to Earth as an infant in a spaceship by his scientist father), his core physical and mental traits,  
8 his mission as a champion of the oppressed to use his great powers to benefit humankind, his  
9 secret identity as newspaper reporter, "Clark Kent," his relationship with other key characters  
10 such as the newspaper editor from whom he takes his assignments and his romantic interest in  
11 Lois, who rebuffs Clark as a coward, while romantically inclined towards "Superman."

12           27.     Action Comics No. 1 was followed by further issues published at regular  
13 intervals, with each subsequent issue containing additional "Superman" material created by  
14 Siegel and Shuster.

15           28.     Between March, 1938 and on or about September, 1938, Siegel and Shuster  
16 continued to create "Superman" strips, stories and continuities.

17           29.     On or about September 22, 1938, Detective Comics, Siegel and Shuster entered  
18 into an agreement with The McClure Newspaper Syndicate (hereinafter, the "1938 McClure  
19 Agreement) regarding the newspaper syndication of a "Superman" comic strip.

20           30.     On or about September 22, 1938, Detective Comics and Siegel and Shuster  
21 therefore entered into an agreement (hereinafter, the "1938 Agreement") which for the first  
22 time provided that Detective Comics would thereby "employ and retain" Siegel and Shuster to  
23 do the "artwork and continuity" for five comic strips, including "Superman."

24           31.     Prior to September 22, 1938, Siegel and Shuster solely created six comic book  
25 issues of "Superman," published as Action Comics Nos. 1 through 6. Of these, Action  
26 Comics Nos. 1 through 5 had been published prior to September 22, 1938; and Action Comics  
27 No. 6 was published four days later on September 26, 1938.

28

1           32.     Action Comics No. 1 was not a “work made for hire.” Action Comics Nos. 2-  
2 6, which were thereafter created by Siegel and Shuster prior to their entering into the 1938  
3 Agreement, were also not “works made for hire.”

4           33.     On or about December 19, 1939, Detective Comics and Siegel and Shuster  
5 entered into a supplemental agreement (hereinafter, the “1939 Agreement”) which raised  
6 Siegel and Shuster’s per page compensation rate for the increasingly popular “Superman”  
7 comic strip.

8           34.     Plaintiffs are informed and believe and thereon allege that the “Superman”  
9 works created by Siegel and Shuster after they entered into the September 22, 1938 agreement  
10 with Detective Comics were also not “works made for hire.” The 1938 Agreement for the  
11 first time used the term “employ and retain” with respect to Siegel and Shuster’s subsequent  
12 work on “Superman,” yet Siegel and Shuster were never traditional employees of Detective  
13 Comics. Without limitation, Siegel and Shuster were not paid a salary, but were consistently  
14 paid on a “per page” basis, and only for materials actually delivered by them and published.  
15 Plaintiffs are further informed and believe and thereon allege that in compensating Siegel and  
16 Shuster, Detective Comics did not withhold or deduct payroll, social security and other taxes  
17 normally deducted from employee salaries; Detective Comics did not provide employee  
18 benefits to Siegel and Shuster; Siegel and Shuster worked from their own premises (not  
19 Detective Comic’s premises); determined their own hours and days of work; supplied, used  
20 and paid for their own instrumentalities, tools and materials; and hired and paid for their own  
21 assistants.

22           35.     In or about 1947, Siegel and Shuster filed an action in the Supreme Court of  
23 the State of New York, County of Westchester against National Comics Publications, Inc.  
24 (hereinafter, the “1947 Action” ) to determine the validity of the contracts between National  
25 Comics Publications, Inc.’s predecessors-in-interest and Siegel and Shuster with respect to  
26 “Superman.” Pursuant to stipulation of the parties the action was referred for decision to an  
27 Official Referee of the New York Supreme Court. After trial of the action the Official Referee  
28 rendered an opinion dated November 1, 1947. On April 12, 1948, the Official Referee signed

1 detailed findings of fact and conclusions of law and entered an interlocutory judgment  
2 upholding the contracts in some respects, to which notices of appeal were filed by all said  
3 parties. Settlement negotiations ensued, resulting in a stipulation of settlement between said  
4 parties executed on or about May 19, 1948 (hereinafter, the "1948 Stipulation"), and the entry  
5 in the New York Supreme Court of a final consent judgment dated May 21, 1948.

6 36. In or about the early 1970's, a dispute arose between Siegel and Shuster and  
7 National Periodical Publications, Inc. regarding the renewal copyright to "Superman,"  
8 resulting in Siegel and Shuster's filing of an action against National Periodical Publications,  
9 Inc. in the United States District Court for the Southern District of New York for a declaration  
10 that Siegel and Shuster were entitled to the renewal copyright to "Superman." The District  
11 Court held in Jerome Siegel and Joseph Shuster v. National Periodical Publications, Inc. et al.,  
12 364 F. Supp.1032 (1973) that the initial "Superman" comic strip, published in Action Comics  
13 No. 1, is a "work for hire" within the meaning of the Copyright Act, 17 U.S.C. §26, and that,  
14 in any event, the various agreements between the parties, prior to the action, transferred the  
15 renewal copyright in this material to Detective Comics.

16 37. On appeal, the United States Court of Appeals for the Second Circuit held  
17 in Jerome Siegel and Joseph Shuster v. National Periodical Publications, Inc. et al., 509 F.2d  
18 909 (2<sup>nd</sup> Cir., 1974), that the District Court erred in finding that Superman was a "work for  
19 hire" under the Copyright Act, 17 U.S.C. §26, and that "Superman" and his miraculous  
20 powers were created by Siegel and Shuster long before any employment relationship with  
21 Detective Comics. The Second Circuit nonetheless held that the Official Referee's  
22 determination in the 1947 Action that Siegel and Shuster had transferred all rights in  
23 "Superman" to Detective Comics implicitly included a determination that Siegel and Shuster  
24 had transferred the renewal copyright in "Superman" to Detective Comics; and that this  
25 determination was binding under the doctrine of *res judicata*.

26 38. On or about December 23, 1975, Siegel and Shuster entered into an agreement  
27 with Warner Communications Inc. (hereinafter the "1975 Agreement") the alleged parent  
28 company of National Periodical Publications, Inc., which provided for (i) the payment of

1 \$10,000 to Siegel and Shuster, modest annual payments plus medical benefits to Siegel and  
2 Shuster and, upon their deaths, to certain of their respective heirs; and (ii) that Siegel and  
3 Shuster would be given credit on certain "Superman" publications and derivative works as the  
4 "creators" of Superman, in exchange for Siegel and Shuster's acknowledgement that Warner  
5 Communications, Inc. is the exclusive owner of all right, title and interest in and to  
6 "Superman." (The 1937 Agreement, the 1938 Grant, the 1938 McClure Agreement, the 1938  
7 Agreement, the 1939 Agreement, the 1948 Stipulation and the 1975 Agreement described  
8 hereinabove are hereinafter sometimes referred to collectively as the "Alleged Grants".)

9 39. On April 3, 1997, Plaintiffs, Joanne Siegel and Laura Siegel, served by first  
10 class mail, postage prepaid, notices of termination, as permitted by the Copyright Act, 17  
11 U.S.C. § 304 (c) (hereinafter, the "Termination Notices") on each of the Defendants and a  
12 number of their subsidiaries, licensees and affiliates, terminating the Alleged Grants of the  
13 renewal copyright to (i) the copyrightable "Superman" character, (ii) the 1933 Superman  
14 Comic Strip and the Revised 1933 Superman Comic Strip, both published as/in Action  
15 Comics No. 1, (iii) the material published as/in Action Comics Nos. 1-6 (statutory copyright  
16 to Action Comics No. 6 was secured on September 26, 1938), (iv) the material published as/in  
17 Action Comics Nos. 7- 61 (statutory copyright to Action Comics No. 61 was secured on April  
18 13, 1943), and/or (v) subsequent works involving "Superman," all as set forth in the Notices  
19 of Termination (hereinafter sometimes referred to collectively as the "Works").

20 40. Plaintiffs are informed and believe and based thereon allege the Initially  
21 Unpublished Works set forth in the Termination Notices were incorporated or included in  
22 Works published thereafter, to which the Termination applies.

23 41. Plaintiffs are further informed and believe and based thereon allege that the  
24 copyrights to all the Works were duly renewed.

25 42. The Notices of Termination were drafted, served on Defendants and filed with  
26 the United States Copyright Office, all in full compliance with the Copyright Act, 17 U.S.C.  
27 304(c), and the regulations promulgated thereunder by the Register of Copyrights, 37 C.F.R. §  
28

1 201.10 (2003). (Plaintiffs' aforesaid exercise of their termination rights under 17 U.S.C. §  
2 304(c) regarding "Superman" is sometimes hereinafter referred to as the "Termination").

3 43. As the original co-author of each Work Jerome Siegel owned an undivided fifty  
4 percent (50%) of the copyright of each Work prior to any alleged transfer or assignment of any  
5 such Work pursuant to any Alleged Grant.

6 44. The Notices of Termination terminated on April 16, 1999 (hereinafter, the  
7 "Termination Date") all prior grants or purported grants of the renewal copyrights in and to  
8 each and/or all the Works for their extended renewal terms (hereinafter, sometimes referred to  
9 individually and collectively as the "Recaptured Copyrights"), including, but not limited to,  
10 the Alleged Grants.

11 45. On April 16, 1999, the Termination Date, Plaintiffs re-gained ownership to  
12 Jerome Siegel's undivided fifty percent (50%) copyright interest in and to each and/or all the  
13 Works for their extended renewal terms. In accordance with 17 U.S.C. 304(c), and as set forth  
14 in the Notices of Termination, Jerome Siegel's surviving son, Michael Siegel, is also entitled  
15 to share in the proceeds from this recaptured interest.

16 46. Defendants have acknowledged that the Notices of Termination are effective.  
17 Defendants have further admitted that Plaintiff's thereby co-own the copyright(s) to at least  
18 the original "Superman" elements authored by Siegel and Shuster; and that Defendants have a  
19 duty to account to Plaintiffs for Defendants' exploitation of such copyright(s).

20 47. On April 16, 1997, in response to the service of the Notices of Termination,  
21 John A. Schulman, Executive Vice President and General Counsel of Defendant Warner Bros.  
22 wrote a letter to Joanne Siegel, stating in relevant part:

23 "As to the Notices of Termination, I wasn't surprised at their  
24 arrival...After the effective date of the termination, there will  
25 still remain 14 years of copyright protection left to the joint  
26 copyright holders of the original Superman elements. Those are  
27 what we should share."  
28

1           48.     Similarly, on October 10, 1997, Paul Levitz, President and Publisher of  
2 Defendant DC Comics, wrote a letter to Plaintiffs, stating in relevant part:

3                   “The [Superman] rights involved are non-exclusive; they are  
4                   shared with DC. Since both you and DC would have these  
5                   rights, we would each have the obligation to pay the other for  
6                   using those rights if you did not re-grant them to DC.”

7           49.     Yet, on April 15, 1999, one day before the Termination Date, Defendant DC,  
8 by its attorneys (Fross Zelnick, *et al*) sent a letter to the Plaintiffs’ attorney, Arthur J. Levine,  
9 frivolously denying the validity of the termination with respect to *any* “Superman” copyrights,  
10 stating in relevant part:

11                   “[Y]ou are hereby put on notice that DC Comics rejects both  
12                   the validity and scope of the notices and will vigorously oppose  
13                   any attempt by your clients to exploit or authorize the  
14                   exploitation of any copyrights, or indeed, any rights at all, in  
15                   Superman.”

16           50.     Defendant DC’s April 15, 1999 letter constituted a thinly veiled threat that if  
17 Plaintiffs ever attempted to exploit *any* of their recaptured copyright interests in “Superman,”  
18 Defendants would engage in a campaign of intimidation, including, but not limited to,  
19 instituting frivolous litigation against Plaintiffs and using Defendants’ enormous market  
20 power to restrict Plaintiffs’ ability to exploit their Recaptured Copyright interests. Given that  
21 Time Warner is one of the largest media companies in the world with over \$38 billion in  
22 annual revenues, Defendants’ threats had a devastating and chilling effect on Plaintiffs’  
23 freedom to exploit the copyright interests they had properly regained under the Copyright Act,  
24 17 U.S.C. § 304 (c), damaging Plaintiffs and causing them great emotional distress.

25           51.     In the nearly 5 ½ years since the Termination Date, none of the Defendants has  
26 ever accounted to the Plaintiffs for any proceeds or profits whatsoever from their ongoing  
27 exploitation of “Superman” and the jointly owned Recaptured Copyrights.

28     ////

1 **FIRST CLAIM FOR RELIEF**

2 (Declaratory Relief Re: Termination, 17 U.S.C. § 304(c) - Against All Defendants)

3 52. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 51  
4 inclusive, as though fully set forth herein.

5 53. By reason of the foregoing facts, an actual and justiciable controversy has  
6 arisen and now exists between Plaintiffs and Defendants under Federal copyright law, 17  
7 U.S.C. §§ 101 *et seq.*, concerning their respective rights and interests in and to the copyright  
8 to various “Superman” works, for which Plaintiffs desires a declaration of rights.

9 54. Plaintiffs contend and Defendants deny that:

10 a. The Notices of Termination terminated on April 16, 1999 all prior  
11 grants, assignments or transfers of copyrights for the extended renewal term in and to each  
12 and/or all of the Works (as defined in paragraph 39 hereinabove) to any of the Defendants and  
13 other parties duly served with the Notices of Termination, including their predecessors-in-  
14 interest;

15 b. As of the effective Termination Date, April 16, 1999, Plaintiffs owned  
16 and continue to own an undivided fifty percent (50%) of the Recaptured Copyrights to each  
17 and/or all the Works for their renewal terms;

18 c. By reason of the foregoing, Plaintiffs are entitled to fifty percent (50%)  
19 of any and all proceeds, compensation, monies, profits, gains and advantages from the  
20 exploitation of, or attributable to, in whole or in part, any aspect of the Recaptured Copyrights  
21 (hereinafter, sometimes referred to as “Profits”); and

22 d. By reason of the foregoing, Defendants own or control only fifty  
23 percent (50%) of the Recaptured Copyrights, and thus, as of the Termination Date, had and  
24 have no authority to confer exclusive licenses or grants with respect to any element of the  
25 “Superman” mythology protected by the Recaptured Copyrights.

26 55. A declaration of the Court is necessary pursuant to the Declaratory Judgment  
27 Act, 28 U.S.C. §§ 2201 *et seq.*, so that the parties may know their respective rights and  
28

obligations with respect to the Termination and the copyright interests thereby recaptured by Plaintiffs.

### **SECOND CLAIM FOR RELIEF**

(Declaratory Relief Re: Profits from Recaptured Copyrights - Against All Defendants)

56. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 55 inclusive, as though fully set forth herein.

57. By reason of the foregoing facts, an actual and justiciable controversy has arisen and now exists between Plaintiffs and Defendants concerning how Profits from Recaptured Copyrights should be defined for purposes of Defendants and Plaintiffs accounting to one another as joint owners of the Recaptured Copyrights.

58. Plaintiffs contend and Defendants deny that:

a. Profits include Defendants' revenues from the post - April 16, 1999 exploitation of the Recaptured Copyrights in foreign territories, when such exploitation results from the predicate exercise *in the United States* of any right(s) under the Recaptured Copyrights by any Defendant, their licensees or assigns;

b. There should be no *apportionment* of Profits since Plaintiffs are entitled to fifty percent (50%) of such Profits as *joint owners* of the Recaptured Copyrights;

c. Alternatively, *apportionment*, if any, should apply only to profits from the exploitation of the Recaptured Copyrights in *derivative works created by a Defendant*, but not to profits from mere *licensing* of the Recaptured Works. Any such apportionment should weigh heavily in Plaintiff's favor, since the value of the "Superman" franchise exploited by the Defendants ("Superman Franchise") is largely attributable to the unique "Superman" mythology protected by the Recaptured Copyrights. The Superman Franchise capitalizes on the success of, and is hardly distinguishable from, the underlying Recaptured Copyrights co-owned by Plaintiffs;

d. Profits include profits from any merchandise or other derivative works created, produced or manufactured on or after the Termination Date, April 16, 1999,

1 notwithstanding that the underlying licensing agreement for such exploitations may have been  
2 executed prior thereto;

3 e. Profits are not limited to the Profits of Defendant DC, Warner Bros.'  
4 wholly owned subsidiary, but include the Profits of Defendants Warner Bros. and Time  
5 Warner, as well; and

6 f. In determining Profits, deductible costs should include only reasonable  
7 costs directly attributable to the exploitation of the Recaptured Copyrights, of the type  
8 customarily deducted in arms' length agreements to exploit copyrights of comparable value,  
9 all in compliance with Generally Accepted Accounting Principles (GAAP).

10 59. A declaration of the Court is necessary pursuant to the Declaratory Judgment  
11 Act, 28 U.S.C. §§ 2201 *et seq.* so that the parties may know their respective rights and  
12 obligations with respect to Profits from the exploitation of the Recaptured Copyrights after the  
13 Termination Date.

### 14 **THIRD CLAIM FOR RELIEF**

15 (Declaratory Relief Re: Use of the "Superman" Crest - Against All Defendants)

16 60. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 59  
17 inclusive, as though fully set forth herein.

18 61. By reason of the foregoing facts, an actual and justiciable controversy has  
19 arisen and now exists between Plaintiffs and Defendants concerning whether Plaintiffs are  
20 entitled, after the Termination Date, to commercially exploit the "Superman" crest comprised  
21 of a large red "S" centered on a broad triangular yellow field, first appearing (as part of  
22 "Superman's" costume, centered on and highlighting Superman's "V" shaped muscular chest)  
23 in the 1934 Superman Comic Strip and the 1934 Revised Superman Comic Strip created by  
24 Siegel and Shuster and the published as Action Comics No. 1, and in only slightly revised  
25 form in subsequent Works (hereinafter the "Superman Crest"); and whether Defendants' duty  
26 to account, as non-exclusive joint owners of such Recaptured Copyrights, include Profits from  
27 licensing of this crest.

28

1           62. Defendants allege a trademark interest in a "Superman" shield (hereinafter the  
2 "Superman Shield" and/or "Superman Trademark") which is also comprised of a large red "S"  
3 on a broad triangular yellow field, first appearing in later Works, as part of "Superman's"  
4 costume, centered on and highlighting Superman's "V" shaped muscular chest, with the upper  
5 corners of the triangular crest slightly cropped.

6           63. Plaintiffs contend and Defendants deny that:

7           a. The Recaptured Copyrights include the copyright to the "Superman"  
8 crest comprised of a large red "S" centered on a broad triangular yellow field, first appearing  
9 as part of "Superman's" costume, centered on and highlighting Superman's "V" shaped  
10 muscular chest, in the 1934 Superman Comic Strip and the Revised 1934 Superman Comic  
11 Strip published as Action Comics No. 1, and appeared in subsequently published Works in  
12 only slightly revised form (hereinafter the "Superman Crest").

13           b. Defendants' alleged Superman Trademark design arose directly from,  
14 and is substantially identical to, Siegel and Shuster's copyrighted Superman Crest;

15           c. Defendants receive significant proceeds and value from the utilization  
16 and copying of the Superman Crest and/or substantially identical Superman Shield for which  
17 Defendants must account to Plaintiffs;

18           d. In turn, Plaintiffs should likewise be allowed to exercise their rights  
19 under copyright with respect to the Superman Crest, including without limitation the right to  
20 commercially exploit the Superman Shield in merchandise;

21           e. Defendants, in any event, cannot use the alleged Superman Trademark  
22 or any other purported trademark interest regarding "Superman" to prevent, hinder or restrain  
23 Plaintiffs' use, exercise or exploitation of their rights under the Copyright Act in any of the  
24 jointly owned Recaptured Copyrights.

25           64. A declaration of the Court is necessary pursuant to the Declaratory Judgment  
26 Act, 28 U.S.C. §§ 2201 et seq., so that the parties may know their respective rights and  
27 obligations with respect to the Superman Crest and the Superman Shield.

28 ////

1 **FOURTH CLAIM FOR RELIEF**

2 (Accounting for Profits - Against All Defendants)

3 65. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64  
4 inclusive, as though fully set forth herein.

5 66. On or after the Termination Date, April 16, 1999, Defendants and/or each of  
6 them have licensed and/or commercially exploited and will continue to license or exploit the  
7 Recaptured Copyrights, including without limitation, *via* merchandising, publishing, and  
8 derivative motion picture and television programming.

9 67. As result of such licensing and/or commercial exploitation of the Recaptured  
10 Copyrights on or after April 16, 1999, Defendants and/or each of them have received and will  
11 continue to receive substantial Profits, fifty percent (50%) of which is payable to Plaintiffs as  
12 the joint owner of the Recaptured Copyrights.

13 68. Defendant Warner Bros. has acted and continues to act in most instances as the  
14 effective joint-owner and licensor (as opposed to licensee) of the Recaptured Copyrights; and,  
15 as such, Warner Bros., along with the other Defendants, owes a duty to account to Plaintiffs.

16 69. To date, the Profits received by Defendants and/or each of them from such  
17 licensing and/or commercial exploitation on or after April 16, 1999 is estimated to be \$40  
18 million, however the exact sums actually received and to be received by Defendants and/or  
19 each of them, are unknown to Plaintiffs at this time, for these amounts can be properly  
20 determined only by an accounting.

21 70. Plaintiffs have demanded an accounting by Defendants on a continuing basis  
22 of all amounts received by them and/or payable to them from such licensing and other  
23 commercial exploitation on or after April 16, 1999, and that Defendants pay Plaintiffs their  
24 fifty percent (50%) share of all such Profits.

25 71. In nearly 5 ½ years since the Termination Date, Defendants have, nonetheless,  
26 never accounted to or paid any Profits whatsoever to Plaintiffs.

27 ////

28 ////

72. Plaintiffs at no time waived their rights to receive their share of such Profits, nor have Plaintiffs at any time consented to the use and exploitation of the Recaptured Copyrights in the United States or any foreign territories.

73. Plaintiffs are entitled to an ongoing accounting from Defendants regarding all amounts received, realized by or payable to Defendants on or after April 16, 1999 from the licensing and any other commercial exploitation of the Recaptured Copyrights and “Superman Franchise,” and to the payment by Defendants to Plaintiffs of fifty percent (50%) of all such Profits.

### FIFTH CLAIM FOR RELIEF

(Waste of Co-Owned Copyright - Against All Defendants)

74. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 73 inclusive, as though fully set forth herein.

75. On or about April 16, 1999, Plaintiffs became and currently are the co-owners, as tenants in common, with Defendants of an undivided fifty percent (50%) of the Recaptured Copyrights.

76. The April 15, 1999 letter from Defendant DC's attorneys alleged hereinabove baselessly denied the validity of the Termination with respect to *any* and all "Superman" copyrights and threatened to take action against Plaintiffs if they attempted to exploit *any* of their Recaptured Copyrights.

77. In so threatening Plaintiffs, DC, and by extension DC's parent companies, Warner Bros. and Time Warner, asserted exclusive ownership and control of "Superman" and effectively controlled the Recaptured Copyrights, notwithstanding the Termination.

78. Plaintiffs are informed and believe and thereon allege that in light of Defendants' adverse claims, resources, power and ubiquitous presence in the marketplace, virtually no parties would dare to license the Recaptured Copyrights from Plaintiffs.

79. Plaintiffs are informed and believe and thereon allege that since the Termination Date, Defendants and/or each of them have caused injury to the Recaptured Copyrights by committing waste thereon. Plaintiffs are informed and believe and thereon

1 allege that such waste includes, without limitation, Defendants under-utilization of the  
2 Recaptured Copyrights, non “arms length” contracts between wholly owned subsidiaries  
3 and/or divisions, self-serving accounting practices and the improper allocation of revenues,  
4 costs and profits with respect to the Recaptured Copyrights, and the overall weakening of the  
5 Superman Franchise due to Defendants relatively marginal exploitation thereof in a period  
6 when market opportunities for such a superhero franchise has been and continues to be at an  
7 all time high.

8         80.     The ongoing waste by Defendants has caused and continues to cause great  
9 irreparable injury to Plaintiffs as co-owners of the Recaptured Copyrights, and such damages  
10 are particularly acute given that the Recaptured Copyrights are of limited duration.

11         81.     By reason of the foregoing, Defendants have committed waste on the  
12 Recaptured Copyrights, and as a direct and proximate result thereof, have damaged Plaintiffs  
13 in an amount not yet ascertained, but which will be assessed at the time of trial.

14         82.     Plaintiffs are informed and believe and thereon allege that Defendants’  
15 frivolous denial of the validity of the Termination with respect to any “Superman” copyrights;  
16 Defendants’ threats to bring suit against Plaintiffs if they attempted to exploit any of their  
17 recaptured copyright interest; and Defendants willful failure to account and improper  
18 accounting practices, after the Termination Date, were conducted in an intentional, malicious,  
19 calculated and oppressive manner in conscious disregard for Plaintiffs’ rights, health and  
20 feelings, and knowingly and intentionally injured and damaged Plaintiffs, which conduct  
21 constituted oppression and malice as defined by California Civil Code § 3294. In accordance  
22 with California Civil Code § 3294, Plaintiffs are entitled to punitive damages in an amount  
23 sufficient to punish Defendants, to be assessed at trial.

24                     **FIFTH CLAIM FOR RELIEF**

25             (Violation of the Lanham Act § 43(a), 15 U.S.C. § 1125 - Against All Defendants)

26         83.     Plaintiffs re-allege and incorporate by reference paragraphs 1 through 82  
27 inclusive, as though fully set forth herein.

28     ////

1           84.     Plaintiffs are informed and believe and thereon allege that Defendants have  
2 failed and refused to include Plaintiffs names, as co-owners of the Recaptured Copyrights, on  
3 any and all copyright notices pertaining to such Recaptured Copyrights, with a willful  
4 intention to mislead and misrepresent the nature, qualities, and origins of Defendants' goods,  
5 services or commercial activities.

6           85.     Plaintiffs are informed and believe and thereon allege that Defendants DC,  
7 Warner Bros. and Time Warner have falsely represented to third parties that Defendants are  
8 the *exclusive* owners of all copyrights to the Recaptured Copyrights and based upon such false  
9 claims, representations and omissions have induced others to enter into agreements with them,  
10 including but not limited to agreements to *exclusively* license, develop, and create new  
11 derivative works from the Recaptured Copyrights.

12           86.     Plaintiffs are informed and believe and thereon allege that Defendants used  
13 such false designations, attributions and omissions regarding the Recaptured Copyrights in  
14 interstate commerce in order to induce others to enter into contracts or other forms of business  
15 arrangements with Defendants for the exploitation of Recaptured Copyrights. Such actions  
16 constitute the use of false description or representation in interstate commerce, likely to cause  
17 confusion, mistake or to deceive and is in opposition to the protection of the public interest.

18           87.     Defendants have passed off and continue to pass off and misrepresent the  
19 Recaptured Copyrights which are co-owned by Plaintiffs as being exclusively owned by  
20 Defendants, thus appropriating Plaintiffs' rights in the Recaptured Copyrights and depriving  
21 Plaintiffs of their rights to ownership credit in, and use of, the Recaptured Copyrights and of  
22 attendant goodwill, resulting in likely confusion of and a fraud on the public.

23           88.     Plaintiffs are informed and believe and thereon allege that in doing so  
24 Defendants were attempting to pass off the Recaptured Copyrights as Defendants sole  
25 property in a manner calculated to deceive Plaintiffs' potential licensors and/or customers and  
26 members of the public.

27           89.     Defendants' passing off and false and misleading designation have proximately  
28 caused and will continue to cause Plaintiffs substantial injury and damage including, without

1 limitation, loss of customers, dilution of goodwill, injury to their business reputation, and  
2 diminution of the value of the Recaptured Copyrights. The ongoing harm this wrongful  
3 conduct will cause to Plaintiffs is both imminent and irreparable, and the amount of damage  
4 sustained by Plaintiffs will be difficult to ascertain if such wrongful conduct is allowed to  
5 continue unabated.

6 90. By reason of the foregoing, Defendants have violated and are continuing to  
7 violate the Lanham Act, 15 U.S.C. § 1125.

8 91. Plaintiffs are entitled to an injunction, during the pendency of this action, and  
9 permanently, restraining Defendants, their officers, agents and employees, and all persons  
10 acting in concert with them, from *exclusively* licensing or granting rights to any element of the  
11 Superman Franchise protected by the Recaptured Copyrights

12 92. Plaintiffs are entitled to injunctive relief during the pendency of this action and  
13 permanently, restraining Defendants, their agents, employees, and all persons acting in concert  
14 with them, from engaging in any further violations of the Lanham Act, and to require  
15 Defendants to include Plaintiffs' names on all copyright notices relating to the Recaptured  
16 Copyrights.

17 93. Plaintiffs have no adequate remedy at law with respect to these ongoing  
18 violations.

19 94. Plaintiffs are further entitled to recover from Defendants the damages,  
20 including attorneys' fees and costs, it sustained and will sustain, and any income, gains,  
21 profits, and advantages obtained by Defendants as a result of their acts and omissions alleged  
22 hereinabove, in an amount which cannot yet be fully ascertained, but which shall be assessed  
23 at the time of trial.

24 95. Plaintiffs are informed and believe and thereon allege that Defendants'  
25 wrongful conduct, acts and omissions were conducted in an intentional, callous, and  
26 calculated manner in conscious disregard for Plaintiffs' rights, health and feelings, and  
27 knowingly and intentionally injured and damaged Plaintiffs, which conduct constituted  
28 oppression and malice as defined by California Civil Code § 3294. In accordance with

1 California Civil Code § 3294, Plaintiffs are entitled to punitive damages in an amount  
2 sufficient to punish Defendants DC, Warner Bros. and Time Warner, to be assessed at trial.

3 **SIXTH CLAIM FOR RELIEF**

4 (Violation of California Business and Professions Code, §§ 17200 *et seq.*

5 (Unfair Competition) - Against All Defendants)

6 96. Plaintiffs re-allege and incorporate herein by reference the allegations set forth  
7 in paragraphs 1 through 95, inclusive, as though fully set forth herein.

8 97. In addition to the wrongful acts and omissions alleged hereinabove and  
9 incorporated herein, Plaintiffs are informed and believe that since the Termination Date,  
10 Warner Bros.' and its parent, Time Warner, have intentionally omitted from Time Warner's  
11 Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-  
12 K and other publicly reported documents any and all mention of the Termination, even though  
13 it drastically reduces their ownership interest in "Superman" -- one of their most valuable  
14 intellectual properties. Such systematic public misrepresentations by omission are likely to  
15 deceive, cause confusion and mistake and are an affront to the public interest.

16 98. Defendants' wrongful conduct, acts, and omissions alleged hereinabove  
17 constitute unlawful, unfair business practices and unfair competition under California  
18 Business and Professions Code §§ 17500 *et seq.*, and under the common law.

19 99. As a direct and proximate result of Defendants' conduct, acts, and omissions as  
20 alleged hereinabove, Plaintiffs are entitled to recover their share of any income, gains,  
21 compensation, profits and advantages obtained, received or to be received by Defendants, or  
22 any of them, arising from the licensing and any other exploitation of the Recaptured  
23 Copyrights; and are entitled to an order requiring Defendants, jointly and severally, to render  
24 an accounting to ascertain the amount of such proceeds.

25 100. As a direct and proximate result of Defendants' wrongful conduct, acts and  
26 omissions pleaded hereinabove, Plaintiffs have been damaged, and Defendants have been  
27 unjustly enriched, in an amount that shall be assessed at trial for which damages and/or  
28 restitution and disgorgement is appropriate. Such damages and/or restitution and

1 disgorgement should include a declaration by this Court that Defendants are jointly and  
2 severally the constructive trustee for the benefit of Plaintiffs and an order that Defendants  
3 convey to Plaintiffs fifty percent (50%) of all proceeds and other compensation received or to  
4 be received by Defendants that are attributable the licensing or exploitation on or after the  
5 Termination Date of the Recaptured Copyrights.

6 101. Defendants' wrongful conduct, acts, omissions have proximately caused and  
7 will continue to cause Plaintiffs substantial injury and damage including, without limitation,  
8 loss of customers, dilution of goodwill, injury to Plaintiffs' reputation, and diminution of the  
9 value of Plaintiffs' joint ownership interest in the Recaptured Copyrights. The harm this  
10 wrongful conduct will cause to Plaintiffs is both imminent and irreparable, and the amount of  
11 damage sustained by Plaintiffs will be difficult to ascertain if such wrongful conduct is  
12 allowed to continue without restraint.

13 102. Plaintiffs are entitled to an injunction, during the pendency of this action, and  
14 permanently, restraining Defendants, their officers, agents and employees, and all persons  
15 acting in concert with them, from *exclusively* licensing or granting rights to any element of the  
16 Superman Franchise protected by the Recaptured Copyrights

17 103. Plaintiffs are entitled to an injunction, during the pendency of this action, and  
18 permanently, restraining Defendants, their officers, agents and employees, and all persons  
19 acting in concert with them, from engaging in any such further unlawful conduct, and  
20 requiring Defendants to include Plaintiffs' names on all copyright notices relating to the  
21 Recaptured Copyrights.

22 104. Plaintiffs have no adequate remedy at law with respect to such ongoing  
23 unlawful conduct.

24 105. Plaintiffs are informed and believe and thereon allege that Defendants'  
25 wrongful conduct, acts and omissions were conducted in an intentional, malicious, calculated  
26 and oppressive manner in conscious disregard for Plaintiffs' rights, health and feelings, and  
27 knowingly and intentionally injured and damaged Plaintiffs, which conduct constituted  
28 oppression and malice as defined by California Civil Code § 3294. In accordance with

1 California Civil Code § 3294, Plaintiffs are entitled to punitive damages in an amount  
2 sufficient to punish Defendants, to be assessed at trial.

3 WHEREFORE, Plaintiffs pray for relief as follows:

4 **PRAYER FOR RELIEF**

5 ON THE FIRST CLAIM FOR RELIEF

6 106. For a declaration as follows:

7 a. That pursuant to the Copyright Act, 17 U.S.C. § 304(c), Plaintiffs validly  
8 terminated on April 16, 1999 all prior grants, assignments or transfers to any of the  
9 Defendants and any of their predecessors-in-interest, of the renewal copyrights in and to each  
10 and/or all of the Works;

11 b. That, as of the Termination Date, Plaintiffs owned and continue to own  
12 fifty percent (50%) of the aforesaid Recaptured Copyrights;

13 c. That Defendants control only fifty percent (50%) of the Recaptured  
14 Copyrights, and thus, as of the Termination Date, had/have no authority to confer *exclusive*  
15 licenses or grants with respect to any element of the "Superman" mythology protected by the  
16 Recaptured Copyrights; and

17 d. That Plaintiffs are entitled to fifty percent (50%) of any and all Profits  
18 from the exploitation of, or attributable to, in whole or in part, any aspect of the Recaptured  
19 Copyrights.

20 ON THE SECOND CLAIM FOR RELIEF

21 107. For a declaration as follows:

22 a. That as joint owners of the Recaptured Copyrights, Plaintiffs are  
23 entitled to an accounting for Profits received or payable to the Defendants;

24 b. That Profits include Defendants' revenues from the post - April 16,  
25 1999 exploitation of the Recaptured Copyrights in territories outside of the United States  
26 whenever such exploitation is based on the predicate exercise *in the United States* of any  
27 right(s) in and to the Recaptured Copyrights by any Defendant, their licensees or assigns;

1 c. That there should be no *apportionment* of Profits since Plaintiffs are  
2 entitled to fifty percent (50%) of such Profits as joint owners of the Recaptured Copyrights;

3 d. Alternatively, that apportionment should apply only to profits from the  
4 exploitation of the Recaptured Works in *derivative works created by a Defendant*, but not to  
5 profits from *licensing* of the Recaptured Works;

6 e. That apportionment, if any, should weigh strongly in Plaintiff's favor,  
7 since the value of the Superman Franchise is largely attributable to the unique "Superman"  
8 character and other elements created by Siegel and Shuster and protected by the Recaptured  
9 Copyrights, in a percentage that the court may deem just and proper;

10 f. That Profits include profits from any merchandise or other derivative  
11 works created, produced or manufactured on or after the Termination Date, April 16, 1999,  
12 notwithstanding that underlying licensing for such exploitation may have occurred prior  
13 thereto;

14 g. That Profits include the Profits of Defendants DC, Warner Bros. and  
15 Time Warner, their subsidiaries and divisions; and

16 h. That in determining Profits, only reasonable costs directly attributable  
17 to the exploitation of the Recaptured Copyrights, of the type customarily deducted in arms'  
18 length agreements to exploit copyrights of comparable value to the Recaptured Copyrights,  
19 should be deducted from gross revenues, all in compliance with Generally Accepted  
20 Accounting Principles (GAAP).

21 ON THE THIRD CLAIM FOR RELIEF

22 108. For a declaration as follows:

23 a. That by the Termination, Plaintiffs recaptured a fifty percent (50%)  
24 interest in the copyright to the Superman Crest created by Siegel and Shuster;

25 b. That Defendants' Superman Shield design arose directly from, and is  
26 substantially identical to, the copyrighted Superman Crest created by Siegel and Shuster;

1           f.       That Defendants must account to Plaintiffs for fifty percent (50%) of  
2 the proceeds they receive from the licensing or other exploitation of the Superman Crest  
3 and/or Superman Shield;

4           g.       That Plaintiffs, as co-owners of the copyright in and to the Superman  
5 Crest, likewise are permitted to license or otherwise exploit the Superman Crest, subject to a  
6 duty to account to Defendants for any such exploitation; and

7           h.       That Defendants cannot use their alleged trademark in the Superman  
8 Shield or any other alleged trademark interest with respect to "Superman" to prevent, hinder  
9 or restrain Plaintiffs' use, exercise or exploitation of Plaintiffs' rights under the Copyright Act  
10 in the jointly owned Recaptured Copyrights.

11                               ON THE FOURTH CLAIM FOR RELIEF

12       109.   For an accounting by the Defendants, jointly and severally, of any and all  
13 proceeds from the licensing and any other exploitation of the Recaptured Copyrights or  
14 Superman Franchise on or after the Termination Date, April 16, 1999;

15       110.   For 50% of any and all proceeds from the licensing and any other exploitation  
16 of the Recaptured Works or "Superman Franchise" on or after April 16, 1999 pursuant to such  
17 accounting; and

18       111.   For the imposition of a constructive trust for the benefit of Plaintiffs on all  
19 sums received and to be received by the Defendants, jointly or severally, derived from the  
20 licensing and any other exploitation of the Recaptured Works or "Superman Franchise" on or  
21 after April 16, 1999.

22                               ON THE FIFTH CLAIM FOR RELIEF

23       112.   For compensatory and consequential damages according to proof as shall be  
24 determined at trial; and

25       113.   For punitive and exemplary damages as may be awarded at trial.

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**JURY TRIAL DEMANDED**

Plaintiffs hereby request a trial by jury on each claim for relief alleged in the Complaint.

Dated: October 8, 2004

LAW OFFICE OF MARC TOBEROFF

By: 

Marc Toberoff

Attorneys for Plaintiffs Joanne Siegel and  
Laura Siegel Larson

# **EXHIBIT C**

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12 Telephone: 310.282.2000  
13 Fax: 310.282-2200

12 Attorneys for Defendants Warner Bros.  
13 Entertainment Inc., Time Warner Inc., and  
14 Defendant and Counterclaimant DC Comics

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

17 **JOANNE SIEGEL, an individual; and**  
18 **LAURA SIEGEL LARSON, an individual,**

Case No.  
04-8400 (DDP) (RZx)

19 **Plaintiffs,**

20 **vs.**

21 **WARNER BROS. ENTERTAINMENT**  
22 **INC., a corporation; TIME WARNER**  
23 **INC., a corporation; DC COMICS, a**  
24 **general partnership; and DOES 1-10.**

25 **Defendants.**

**ANSWER AND  
COUNTERCLAIMS**

1 DC COMICS,

2 Counterclaimant,

3  
4 vs.

5 JOANNE SIEGEL, an individual; and  
6 LAURA SIEGEL LARSON, an individual,

7  
8 Counterclaim Defendants.

9 Defendants Warner Bros. Entertainment Inc. ("Warner Bros."), Time  
10 Warner Inc. ("Time Warner"), and DC Comics ("DC" or "DC Comics")  
11 (collectively "Defendants"), by their attorneys, answer the Complaint, as corrected  
12 by plaintiffs' Notice of Errata Re: Plaintiffs' Complaint filed October 28, 2004:

13 1. Defendants admit only that plaintiffs have brought this civil action for  
14 the alleged causes of action set forth in the Complaint, but otherwise deny the  
15 allegations in paragraph 1.

16 2. Defendants admit only that plaintiffs purport to assert that this Court  
17 has subject matter jurisdiction as alleged in paragraph 2 but otherwise deny the  
18 allegations contained in the Complaint.

19 3. Defendants admit only that plaintiffs purport to assert that this Court  
20 has supplemental jurisdiction as alleged in paragraph 3 but otherwise deny the  
21 allegations contained in the Complaint.

22 4. Defendants admit only that they regularly do business in the State of  
23 California and in this District but otherwise deny the allegations in paragraph 4.

24 5. Admitted.

25 6. Defendants lack knowledge or information sufficient to form a belief  
26 as to the truth of the allegations contained in paragraph 6 and on that basis deny the  
27 same.  
28

1           7. Defendants lack knowledge or information sufficient to form a belief  
2 as to the truth of the allegations contained in paragraph 7 and on that basis deny the  
3 same.

4           8. Admitted.

5           9. Defendants deny the allegations contained in paragraph 9 except  
6 admit that DC Comics is a New York General Partnership comprised of Warner  
7 Communications, Inc. and E.C. Publications, Inc.

8           10. Defendants deny the allegations in paragraph 10 except admit that DC  
9 Comics is the successor-in-interest to, *inter alia*, Detective Comics, Inc. and  
10 National Periodical Publications, Inc. and except to the extent the allegations  
11 accurately reflect the contents of documents, and respectfully refer the Court to  
12 such documents for evidence of the contents thereof.

13           11. Defendants deny the allegations contained in paragraph 11 except  
14 admit that Time Warner Inc. is a Delaware corporation with its corporate  
15 headquarters in the State of New York and that certain of its wholly owned  
16 subsidiaries regularly conduct business in the State of California and in the County  
17 of Los Angeles. Defendants further admit that defendant Warner Bros. is affiliated  
18 with defendant Time Warner Inc. and that DC Comics is a New York general  
19 partnership whose general partners are entities affiliated with defendant Time  
20 Warner Inc.

21           12. Denied.

22           13. Denied.

23           14. Defendants lack knowledge or information sufficient to form a belief  
24 as to the truth of the allegations contained in paragraph 14 and on that basis deny  
25 the same.

26           15. Denied.

27           16. Defendants admit only that in 1933 Siegel and Shuster co-created a  
28 character entitled Superman, which character was thereafter substantially changed

1 prior to its first publication in 1938 but lack knowledge or information sufficient to  
2 form a belief as to the truth of the remaining allegations contained in paragraph 16  
3 and on that basis deny the same.

4 17. Defendants admit only that during the 1930s Siegel and Shuster  
5 created twenty-four days of comic strips featuring a character entitled Superman  
6 and a paragraph previewing future Superman exploits, but lack knowledge or  
7 information sufficient to form a belief as to the truth of the allegations contained in  
8 paragraph 17 and on that basis deny the same.

9 18. Defendants lack knowledge or information sufficient to form a belief  
10 as to the truth of the allegations contained in paragraph 18 and on that basis deny  
11 the same.

12 19. Defendants admit only that Siegel and Shuster's work on features  
13 entitled "Henri Duval" and "Dr. Occult" was published by the Nicholson  
14 Publishing Company during the 1930s, that Malcolm Wheeler-Nicholson was  
15 involved with Detective Comics, Inc. and that work that Siegel and Shuster did on  
16 features entitled "Slam Bradley" and "Spy" was published in a comic magazine  
17 entitled "Detective Comics No. 1," but lack knowledge or information sufficient to  
18 form a belief as to the truth of the remaining allegations contained in paragraph 19  
19 and on that basis deny the same.

20 20. Defendants admit only that on or about December 4, 1937, Jerry  
21 Siegel and Joe Shuster entered into an agreement with Detective Comics, Inc. but  
22 deny the remaining allegations in paragraph 20 except to the extent the allegations  
23 accurately reflect the contents of documents, and respectfully refer the Court to  
24 such documents for evidence of the contents thereof.

25 21. Defendants deny that Superman and his "miraculous powers" had all  
26 been completely developed by early 1938 and otherwise Defendants lack  
27 knowledge or information sufficient to form a belief as to the truth of the  
28 allegations contained in paragraph 21 and on that basis deny the same.

1           22. Defendants admit only that in early 1938 defendants' predecessor,  
2 Detective Comics, Inc., requested that Siegel and Shuster turn certain Superman  
3 comic strips they had co-created, along with additional material that Siegel and  
4 Shuster would newly create, into a 13-page comic book story suitable for  
5 publication in a comic magazine format, and that Siegel and Shuster thereafter  
6 delivered such a comic book story to Detective Comics, Inc. and that such story  
7 contained approximately 90 separate panels, but defendants lack knowledge or  
8 information sufficient to form a belief as to the truth of the remaining allegations  
9 contained in paragraph 22 and on that basis deny the same.

10           23. Defendants deny the allegations contained in paragraph 23 except  
11 admit that certain elements and characters of the Superman mythology such as his  
12 origins from a distant planet, some of his physical traits, and his secret identity as  
13 Clark Kent were contained in Action Comics No. 1 and except to the extent the  
14 allegations accurately reflect the contents of documents, and respectfully refer the  
15 Court to such documents for evidence of the contents thereof.

16           24. Defendants admit only that Siegel and Shuster entered into an  
17 agreement with Detective Comics, Inc. dated March 1, 1938 whereby Siegel and  
18 Shuster transferred to Detective Comics, Inc. "the strip entitled 'Superman' . . . all  
19 good will attached thereto and exclusive right to the use of the characters and story,  
20 continuity and title of strip . . ." and agreed not to employ Superman and other  
21 characters in the strip "by their names contained therein," but otherwise deny the  
22 allegations contained in paragraph 24 except to the extent the allegations  
23 accurately reflect the contents of documents, and respectfully refer the Court to  
24 such documents for evidence of the contents thereof.

25           25. Defendants admit that Detective Comics, Inc. published a Superman  
26 comic story in Action Comics No. 1 with a cover date of June 1938, lack  
27 knowledge or information sufficient to form a belief as to the truth of the  
28 allegations contained in paragraph 25 relating to the "Revised 1934 Superman

1 Comic Strip” and on that basis deny the same, and deny the remaining allegations  
2 in paragraph 25, except to the extent the allegations accurately reflect the contents  
3 of documents, and respectfully refer the Court to such documents for evidence of  
4 the contents thereof.

5 26. Defendants deny the allegations in paragraph 26 except admit that  
6 Action Comics No. 1 contains Superman’s origin from a distant, unnamed planet,  
7 some of his physical traits, his secret identity as Clark Kent, a co-worker named  
8 “Lois,” and deny the remaining allegations in paragraph 26 except to the extent the  
9 allegations accurately reflect the contents of documents, and respectfully refer the  
10 Court to such documents for evidence of the contents thereof.

11 27. Defendants admit only that following Action Comics No. 1, at the  
12 instance and expense of Detective Comics, Inc., and subject to its right of control,  
13 Siegel and Shuster jointly created some additional Superman episodes that  
14 appeared in subsequent issues of Action Comics but deny the remaining allegations  
15 in paragraph 27, except to the extent the allegations accurately reflect the contents  
16 of documents, and respectfully refer the Court to such documents for evidence of  
17 the contents thereof.

18 28. Defendants admit only that between March 1938 and September 1938,  
19 Siegel and Shuster jointly created Superman strips, stories and continuities at the  
20 instance and expense of Detective Comics, Inc. and subject to its right of control,  
21 but deny the remaining allegations in paragraph 28, except to the extent the  
22 allegations accurately reflect the contents of documents, and respectfully refer the  
23 Court to such documents for evidence of the contents thereof.

24 29. Defendants admit only that on September 22, 1938 Detective Comics,  
25 Inc., Siegel, Shuster, and The McClure Newspaper Syndicate entered into an  
26 agreement but deny the remaining allegations in paragraph 29, except to the extent  
27 the allegations accurately reflect the contents of documents, and respectfully refer  
28 the Court to such documents for evidence of the contents thereof.

1           30. Defendants admit only that on September 22, 1938 Detective Comics,  
2 Inc., Siegel, and Shuster entered into an agreement but otherwise deny the  
3 allegations in paragraph 30 except to the extent the allegations accurately reflect  
4 the contents of documents, and respectfully refer the Court to such documents for  
5 evidence of the contents thereof.

6           31. Defendants admit only that between March 1938 and September 1938,  
7 Siegel and Shuster provided certain of the contents for Action Comics Nos. 1-6  
8 and that Action Comics Nos. 2-6 were created at the instance and expense of  
9 Detective Comics, Inc. and subject to its right of control, and that Action Comics  
10 Nos. 1-5 were published prior to September 22, 1938; lack knowledge or  
11 information sufficient to form a belief as to the truth of the allegations contained in  
12 paragraph 25 relating to the publication date of Action Comics No. 6 and on that  
13 basis deny the same; and deny the remaining allegations in paragraph 31, except to  
14 the extent the allegations accurately reflect the contents of documents, and  
15 respectfully refer the Court to such documents for evidence of the contents thereof.

16           32. Denied.

17           33. Defendants only admit that Siegel and Shuster entered into an  
18 agreement with Detective Comics, Inc. on December 19, 1939 but otherwise deny  
19 the allegations in paragraph 33, except to the extent the allegations accurately  
20 reflect the contents of documents, and respectfully refer the Court to such  
21 documents for evidence of the contents thereof.

22           34. Defendants deny the allegations contained in the first three sentences  
23 of paragraph 34, except that with respect to the allegations in the third sentence of  
24 paragraph 34, to the extent they accurately reflect the contents of documents,  
25 respectfully refer the Court to such documents for evidence of the contents thereof.  
26 Defendants otherwise lack knowledge or information sufficient to form a belief as  
27 to the truth of the allegations contained in paragraph 34 and on that basis deny the  
28 same.

1           35. Defendants admit the allegations of paragraph 35 except that  
2 defendants deny that the Official Referee's opinion in the 1947 Action was dated  
3 November 1, 1947, deny that the Official Referee only "up[held] the contracts in  
4 some respects," and lack knowledge or information sufficient to form a belief as to  
5 whether the Official Referee "signed" detailed findings of fact on April 12, 1948  
6 and on that basis deny the same.

7           36. Defendants admit the allegations contained in the first sentence of  
8 paragraph 36 except as to the date on which the dispute arose, but otherwise deny  
9 the allegations in paragraph 36 except to the extent the allegations accurately  
10 reflect the contents of documents, and respectfully refer the Court to such  
11 documents for evidence of the contents thereof.

12           37. Defendants deny the allegations in paragraph 37 except to the extent  
13 the allegations accurately reflect the contents of documents, and respectfully refer  
14 the Court to such documents for evidence of the contents thereof.

15           38. Defendants admit only that on December 23, 1975 Siegel and Shuster  
16 entered into an agreement with Warner Communications, Inc., but deny the  
17 remaining allegations in paragraph 38 except to the extent the allegations  
18 accurately reflect the contents of documents, and respectfully refer the Court to  
19 such documents for evidence of the contents thereof.

20           39. Defendants admit only that plaintiffs purport to have mailed notices of  
21 termination dated April 3, 1997 to defendants and various other entities, but deny  
22 the remaining allegations in paragraph 39 except to the extent the allegations  
23 accurately reflect the contents of documents, and respectfully refer the Court to  
24 such documents for evidence of the contents thereof.

25           40. Defendants lack knowledge or information sufficient to form a belief  
26 as to the truth of the allegations contained in paragraph 40 and on that basis deny  
27 the same.

28           41. Admitted.

1           42.   Denied.

2           43.   Denied.

3           44.   Denied.

4           45.   Denied.

5           46.   Denied.

6           47.   Defendants deny the allegations in paragraph 47 except to the extent  
7 the allegations accurately reflect the contents of documents, and respectfully refer  
8 the Court to such documents and all other documents related thereto for evidence  
9 of the contents thereof.

10          48.   Defendants deny the allegations in paragraph 48 except to the extent  
11 the allegations accurately reflect the contents of documents, and respectfully refer  
12 the Court to such documents and all other documents related thereto for evidence  
13 of the contents thereof.

14          49.   Defendants admit only that on April 15, 1999, plaintiffs received a  
15 letter from DC Comics' attorneys that, *inter alia*, rejected the termination notices  
16 and the validity thereof, and stated that DC Comics continued to claim sole  
17 copyright ownership in Superman as of that date. Defendants deny the remaining  
18 allegations in paragraph 49 except to the extent the allegations accurately reflect  
19 the contents of documents, and respectfully refer the Court to such documents and  
20 any documents related thereto for evidence of the contents thereof.

21          50.   Defendants deny the allegations in paragraph 50 except to the extent  
22 the allegations accurately reflect the contents of documents, and respectfully refer  
23 the Court to such documents for evidence of the contents thereof.

24          51.   Defendants deny that plaintiffs own any copyright rights to Superman,  
25 or that any such rights have been "recaptured," but otherwise admit the allegations  
26 in paragraph 51.

27

28

1 **FIRST CLAIM FOR RELIEF**

2 52. Defendants re-allege and incorporate by reference paragraphs 1  
3 through 51 inclusive, as though fully set forth herein.

4 53. Defendants deny the allegations contained in paragraph 53 except  
5 admit that an actual and justiciable controversy has arisen and now exists between  
6 the parties.

7 54. Defendants admit that plaintiffs contend and that defendants deny all  
8 of the assertions contained in paragraph 54, including but not limited to,  
9 subparagraphs (a) – (d).

10 55. Defendants deny the allegations contained in paragraph 55 except  
11 admit that a declaration of the Court is necessary.

12 **SECOND CLAIM FOR RELIEF**

13 56. Defendants re-allege and incorporate by reference paragraphs 1  
14 through 55 inclusive, as though fully set forth herein.

15 57. Defendants deny the allegations in paragraph 57 except admit only  
16 that an actual and justiciable controversy has arisen and now exists between  
17 plaintiffs and defendants.

18 58. Defendants admit that plaintiffs contend and that defendants deny all  
19 of the assertions contained in paragraph 58, including but not limited to,  
20 subparagraphs (a) – (f).

21 59. Defendants deny the allegations contained in paragraph 55 except  
22 admit that a declaration of the Court is necessary.

23 **THIRD CLAIM FOR RELIEF**

24 60. Defendants re-allege and incorporate by reference paragraphs 1  
25 through 59 inclusive, as though fully set forth herein.

26 61. Defendants deny that plaintiffs are entitled to exploit the Superman  
27 crest and that plaintiffs are entitled to any accounting of any profits from any  
28 exploitation thereof and otherwise deny the allegations of paragraph 61.

62. Defendants admit that they own and possess the exclusive right to use a trademark interest in the Superman “S in Shield” device, but otherwise deny the allegations in paragraph 62 except to the extent the allegations accurately reflect the contents of documents, and respectfully refer the Court to such documents for evidence of the contents thereof.

63. Defendants admit that plaintiffs contend and that defendants deny all of the assertions contained in paragraph 63, including but not limited to, subparagraphs (a) – (e).

64. Defendants deny the allegations contained in paragraph 55 except admit that a declaration of the Court is necessary.

#### FOURTH CLAIM FOR RELIEF

65. Defendants re-allege and incorporate by reference paragraphs 1 through 64 inclusive, as though fully set forth herein.

66. Defendants admit that defendant DC Comics has, continuously on an exclusive basis licensed and commercially exploited and intends to continue to license and exploit its copyright rights in Superman. Defendants further admit that defendant Warner Bros. Entertainment Inc. has made use of the Superman copyrights under license from defendant DC Comics. Defendants deny the remaining allegations in paragraph 66.

67. Defendants admit that defendant DC Comics has earned profits from its exploitation of the Superman copyrights, and that defendant Warner Bros. Entertainment Inc. has earned profits from its licensed use of the Superman copyrights, but deny the remaining allegations in paragraph 67.

68. Denied.

69. Denied.

70. Defendants admit that plaintiffs have demanded an accounting but otherwise deny the allegations in paragraph 70.

71. Admitted.

1 72. Denied.

2 73. Denied.

3 **FIFTH CLAIM FOR RELIEF**

4 74. Defendants re-allege and incorporate by reference paragraphs 1  
5 through 73 inclusive, as though fully set forth herein.

6 75. Denied.

7 76. Denied except to the extent the allegations accurately reflect the  
8 contents of documents, and respectfully refer the Court to such documents for  
9 evidence of the contents thereof.

10 77. Defendants admit that defendant DC Comics has continuously and  
11 consistently asserted to plaintiffs exclusive ownership and control of all rights in  
12 Superman but deny the remaining allegations in paragraph 77.

13 78. Defendants lack knowledge or information sufficient to form a belief  
14 as to the truth of the allegations contained in paragraph 78 and on that basis deny  
15 the same.

16 79. Denied.

17 80. Denied.

18 81. Denied.

19 82. Denied.

20 **SIXTH CLAIM FOR RELIEF<sup>1</sup>**

21 83. Defendants re-allege and incorporate by reference paragraphs 1  
22 through 82 inclusive, as though fully set forth herein.

23 84. Defendants admit that they have not listed plaintiffs' names on any  
24 copyright notices, but otherwise deny the allegations in paragraph 84.

25  
26  
27  
28 <sup>1</sup> This claim is erroneously referred to as "Fifth Claim For Relief" in plaintiffs' complaint.

1           85. Defendants admit that DC Comics has continuously held itself out as  
2 the sole owner of copyright and all other rights in Superman but deny the  
3 remaining allegations in paragraph 85.

4           86. Defendants admit that DC Comics has continuously held itself out as  
5 the sole owner of copyright and all other rights in Superman but deny the  
6 remaining allegations in paragraph 86.

7           87. Defendants admit that DC Comics has continuously held itself out as  
8 the sole owner of copyright and all other rights in Superman but deny the  
9 remaining allegations in paragraph 87.

10          88. Defendants admit that DC Comics has continuously held itself out as  
11 the sole owner of copyright and all other rights in Superman but deny the  
12 remaining allegations in paragraph 88.

13          89. Denied.

14          90. Denied.

15          91. Denied.

16          92. Denied.

17          93. Denied.

18          94. Denied.

19          95. Denied.

## 20                                   **SEVENTH CLAIM FOR RELIEF<sup>2</sup>**

21          96. Defendants re-allege and incorporate by reference paragraphs 1  
22 through 95 inclusive, as though fully set forth herein.

23          97. Defendants admit that defendant Time Warner has made no mention  
24 of plaintiffs' ineffective termination notices in publicly reported documents, but  
25 otherwise deny the allegations in paragraph 97.

26          98. Denied.

27          99. Denied.

---

28                                   <sup>2</sup> This claim is erroneously referred to as "Sixth Claim For Relief" in plaintiffs' complaint.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

#### **FIRST AFFIRMATIVE DEFENSE**

106. Plaintiffs' complaint fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

107. Plaintiffs' claims are barred by the doctrines of laches, waiver, acquiescence, and/or estoppel.

#### **THIRD AFFIRMATIVE DEFENSE**

108. Plaintiffs' claims are barred because plaintiffs have not sent a Notice of Termination with respect to a separate and complete grant of rights in Superman by Siegel and Shuster.

#### **FOURTH AFFIRMATIVE DEFENSE**

109. Plaintiffs' claims are barred because plaintiffs have continued to accept the benefits of one of the grants of rights in Superman they allege to have terminated, even after the purported effective date of such termination.

#### **FIFTH AFFIRMATIVE DEFENSE**

110. The "Unpublished Superman" works are not eligible for termination under the Copyright Act or, if they are, any such termination is premature.

#### **SIXTH AFFIRMATIVE DEFENSE**

111. Plaintiffs' claims are barred by the statute of limitations, including but not limited to, 17 U.S.C. § 507 (b).

1                                   **SEVENTH AFFIRMATIVE DEFENSE**

2           112. Plaintiffs' claims are barred because the notices of termination sent by  
3 plaintiffs were not timely served.

4                                   **EIGHTH AFFIRMATIVE DEFENSE**

5           113. Plaintiffs' claims are barred on the basis of settlement.

6                                   **NINTH AFFIRMATIVE DEFENSE**

7           114. Because the various paragraphs of plaintiffs' Complaint do not  
8 comply with Fed. R. Civ. P. 8(a) and (e), defendants are not required to separately  
9 admit or deny each averment contained therein.

10          FOR THESE REASONS, defendants pray that the Court dismiss all of  
11 plaintiffs' claims and find for defendants on all counts, that defendants be awarded  
12 costs, including reasonable attorneys' fees under Section 505 of the United States  
13 Copyright Act, and pray for such other and further relief as this Court deems just  
14 and proper.

15                                   **COUNTERCLAIMS**

16                                   **PARTIES**

17          1. Defendant/Counterclaimant DC Comics ("DC" or "DC Comics") is a  
18 New York General Partnership engaged in the business of, *inter alia*, creating,  
19 exploiting, and licensing comic book stories and characters. DC is the successor in  
20 interest to all rights under copyright and other rights, including trademark rights  
21 and the good will in and to the first Superman story and all other works and  
22 products relating to the Superman character.

23          2. Upon information and belief, Plaintiff/Counterclaim Defendant  
24 Joanne Siegel is an individual and citizen of the State of California, in the County  
25 of Los Angeles. Upon further information and belief, Joanne Siegel is the widow  
26 of Jerome Siegel, the individual credited as a co-creator of the first Superman  
27 stories.  
28

1           3.     Upon information and belief, Plaintiff/Counterclaim Defendant Laura  
2 Siegel Larson is an individual and citizen of the State of California, in the County  
3 of Los Angeles. Upon further information and belief, Laura Siegel Larson is a  
4 daughter of Jerome Siegel. Plaintiff/Counterclaim Defendants Joanne Siegel and  
5 Laura Siegel Larson are referred to herein as “the Siegels.”

#### 6                                   **JURISDICTION AND VENUE**

7           4.     This Court has jurisdiction of the subject matter hereof under the  
8 provisions of the U.S. Copyright Act, 17 U.S.C. § 101 *et seq.*, relating to copyright  
9 ownership, under sections 39 and 43 (a) and (c) of the U.S. Trademark Act, also  
10 known as the Lanham Act, 15 U.S.C. §§ 1121 and 1125 (a) and (c), and sections  
11 1331, 1332, 1338 (a) and 1338 (b) of the Judicial Code, 28 U.S.C. §§ 1331, 1332,  
12 1338 (a) and 1338 (b), as well as under principles of supplemental jurisdiction, 18  
13 U.S.C. § 1367.

14           5.     Venue is proper under 28 U.S.C. § 1391 (b) in that, upon information  
15 and belief, a substantial part of the events giving rise to DC’s claims occurred or a  
16 substantial part of the properties that are the subject of these counterclaims are  
17 situated in this District and/or the Plaintiffs/Counterclaim Defendants may be  
18 found in this District.

#### 19                                   **FACTS COMMON TO ALL COUNTERCLAIMS**

##### 20                                   **Background And History**

21           6.     Upon information and belief, in or about 1933, Jerome Siegel  
22 (“Siegel”) and his friend and co-creator, Joseph Shuster (“Shuster”) collaborated  
23 on creating a number of stories, including a story entitled “The Reign of the  
24 Superman,” which was published in a magazine put out by Siegel and Shuster  
25 themselves entitled “Science Fiction.” Upon further information and belief, other  
26 than the same name, the “Superman” character in this story shared very little, if  
27 any, similarity with the character that would later become known as Superman.  
28

1           7.     Upon information and belief, in early 1933, Siegel and Shuster began  
2 collaborating on "comic strips," initially for syndication and eventually for  
3 publication in "comic books," a new and growing medium. Among their work  
4 together were a number of comic strips featuring a character they named  
5 Superman. This Superman character bore virtually no resemblance to the character  
6 of the same name that had previously appeared in the "Science Fiction" magazine.  
7 Upon further information and belief, those works, which were never published,  
8 included: (a) twenty four (24) days of Superman comic strips intended for  
9 newspapers; (b) a seven page synopsis of the last eighteen days (weeks 2-4) of  
10 such strips; (c) a paragraph previewing Superman exploits; (d) a nine-page  
11 synopsis covering an additional two months of daily comic strips; and (e) fifteen  
12 daily comic strips (collectively the "Unpublished Superman Works").

13           8.     Upon information and belief, between 1933 and 1937 Siegel and  
14 Shuster submitted the Unpublished Superman Works to a number of prospective  
15 publishers and newspaper syndicates, but the work was rejected by them all.

16           9.     Meanwhile, between 1935 and 1937, Siegel and Shuster created a  
17 number of comics strips that were published, including such titles as "Dr. Occult,"  
18 "Henri Duval," and "Spy."

19           10.    On December 4, 1937, Siegel and Shuster entered into an "Agreement  
20 of Employment" (the "December 4, 1937 Agreement") with Detective Comics,  
21 Inc. ("DCI"), a predecessor in interest to DC. Under the Agreement, Siegel and  
22 Shuster agreed to "give their exclusive services" in producing comic features  
23 entitled "Slam Bradley" and "The Spy" for a period of two years. Under the  
24 Agreement, Siegel and Shuster were required to submit any new comics to DCI  
25 first, which reserved the right to accept or reject the work for a period of sixty (60)  
26 days.

27           11.    Early in 1938, DCI was looking for materials for a new comic book it  
28 was intending to publish under the name "Action Comics." In that connection,

1 upon information and belief, DCI was provided with the twenty four (24) days of  
2 Superman comic strips from the Unpublished Superman Works for review. At the  
3 instance and expense of DCI and subject to its right to control, Siegel and Shuster  
4 cut and pasted the comic strips, and added certain additional material, to create a  
5 thirteen page comic book story which was accepted for publication by DCI.

6 12. In an agreement with DCI dated March 1, 1938 (the "March 1, 1938  
7 Agreement"), Siegel and Shuster, among other things, transferred to DCI "the strip  
8 entitled 'Superman' . . . all good will attached thereto and exclusive right to the use  
9 of the characters and story, continuity and title of strip . . ." and agreed not to  
10 employ Superman and other characters in the strip "by their names contained  
11 therein."

12 13. DCI advertised the publication of the new comic story Superman and  
13 the new title "Action Comics No. 1" in others of its publications, including but not  
14 limited to, "More Fun Comics No. 31," "Detective Comics No. 15," and "New  
15 Adventure Comics No. 26," all of which are cover dated May 1938 and, upon  
16 information and belief, were distributed in copies to the public on or before April  
17 1, 1938. These advertisements (the "Superman Ads"), which depict the Superman  
18 character in his costume, exhibiting super-strength, show almost the entirety of  
19 what would become the cover of "Action Comics No.1."

20 14. Upon information and belief, sometime prior to April 16, 1938, but  
21 after the Superman Ads, DCI published the thirteen page Superman comic book  
22 comprising the first Superman story in "Action Comics No. 1," bearing the "cover"  
23 date June 1938 (hereinafter "Action Comics No. 1"). However, Action Comics  
24 No. 1 was not comprised entirely of the pre-existing Unpublished Superman  
25 Works. Rather, upon information and belief, in response to DCI's instruction that  
26 the Unpublished Superman Works be presented as a thirteen page comic book and  
27 subject to DCI's right to control, Siegel and Shuster created additional materials to  
28 complete Action Comics No. 1 (the "Additional Action Comics No. 1 Materials").

1           15.    After the publication of Action Comics No. 1, upon information and  
2 belief, Siegel and Shuster supplied further original Superman stories at DCI's  
3 instance and expense and subject to its right to control. On September 22, 1938,  
4 Siegel and Shuster entered into another employment agreement (the "DCI  
5 September 22, 1938 Agreement"), confirming that Siegel and Shuster had "been  
6 doing the art work and continuity for said comics [including Superman comics] for  
7 us. We wish you to continue to do said work and hereby employ and retain you for  
8 said purposes . . . ." The DCI September 22, 1938 Agreement also contained an  
9 acknowledgement that DCI was the "exclusive" owner of Superman.

10           16.    Also on September 22, 1938, Siegel and Shuster entered into an  
11 agreement with DCI and with the McClure Newspaper Syndicate (the "McClure  
12 September 22, 1938 Agreement") concerning the use of Superman in newspaper  
13 strips.

14           17.    All of Siegel and Shuster's contributions to Superman comic books  
15 and comic strips published subsequent to Action Comics No. 1 as well as the  
16 Additional Action Comics No. 1 Materials, were made either under the DCI March  
17 1, 1938 Agreement, the DCI September 22, 1938 Agreement, the McClure  
18 September 22, 1938 Agreement, or contemporaneous oral agreements confirmed  
19 by one or more of these Agreements, or certain subsequent agreements affirming  
20 those agreements, as employees of DCI or its successors or at DCI's instance and  
21 expense and subject to DCI's right of control, with the result that the copyrights to  
22 all Superman materials created by them after preparation of materials included in  
23 Action Comics No. 1 and to the Additional Action Comics No. 1 Materials are  
24 owned exclusively by DC Comics as works made for hire under the then applicable  
25 1909 Copyright Act.

26           18.    On November 30, 1938, Siegel wrote to DCI (the "November 1938  
27 Letter") suggesting that it do a comic book named Superboy, "which would relate  
28 to the adventures of Superman as a youth." The November 30, 1938 Letter does

1 not contain any discussion of plot, dialogue, appearance, or any other  
2 copyrightable material relating to Superboy. DCI decided not to publish a  
3 “Superboy” comic at that time.

4 19. In 1939, among the Superman comics prepared by Siegel and Shuster  
5 at the instance and expense of DCI and subject to its right of control, was  
6 Superman No. 1, with a cover date of Summer 1939. In Superman No. 1, Clark  
7 Kent was depicted as a youth with super powers.

8 20. On December 19, 1939, Siegel and Shuster entered into a new  
9 agreement with DCI (the “December 19, 1939 Agreement”), which agreement  
10 modified the DCI September 22, 1938 Agreement by, *inter alia*, doubling Siegel  
11 and Shuster’s compensation for Superman comic books and newspaper strips. In  
12 addition, the December 19, 1939 Agreement provided for payment for Siegel and  
13 Shuster for uses of Superman beyond comic books and newspaper strips, such as  
14 radio, motion pictures, and toys. Under the December 19, 1939 Agreement, Siegel  
15 and Shuster again acknowledged DCI’s sole ownership of Superman.

16 21. Upon information and belief, in approximately December 1940,  
17 Siegel, on behalf of himself and Joe Shuster, submitted to DCI a thirteen-page  
18 script of continuity for Superboy (the “Unpublished 1940 Superboy Script”),  
19 renewing his suggestion to DCI that it publish a comic book about Superman as a  
20 youth. The December 1940 Superboy Script, which sets forth a credit line of “By  
21 Jerry Siegel and Joe Shuster,” states, in part, “[s]o many faithful followers of  
22 today’s leading adventure comic strip, SUPERMAN, wrote in demanding the  
23 adventures of Clark Kent as a youth . . . And so here he is at last . . . the answer to  
24 your requests . . . America’s outstanding boy hero: SUPERBOY!” The Unpublished  
25 1940 Superboy Script goes on to say about Superboy that “[i]n later years he was  
26 to become the might [sic] figure known as SUPERMAN!” Again, DCI decided  
27 not to publish a “Superboy” comic at that time.  
28

1           22. Upon information and belief, on a date prior to November 18, 1944,  
2 DCI published its first comic book containing the adventures of Superboy, who  
3 was Superman as a youth, in "More Fun Comics No. 101" with a "cover" date of  
4 January-February 1945 (hereinafter "More Fun Comics No. 101"). Upon  
5 information and belief, DCI employed Shuster or an artist from Shuster's art studio  
6 (with Shuster's knowledge and under his supervision) to create the artwork and  
7 writer Don Cameron to write the Superboy story contained in "More Fun Comics  
8 No. 101." The Superboy story in "More Fun Comics No. 101" bears little if any  
9 resemblance to anything contained in the Unpublished 1940 Superboy Script, and  
10 such similarities as may exist are common to earlier Superman related material  
11 owned by DCI.

12           23. In 1947, Siegel and Shuster brought suit against, *inter alia*, DCI's  
13 successor in interest, National Comics Publications, Inc. ("National") in the New  
14 York Supreme Court in Westchester County (the "Westchester Action"). The  
15 Westchester Action was, in part, the culmination of a dispute between Siegel and  
16 Shuster and National over what Siegel and Shuster claimed was DCI's  
17 unauthorized publication of Superboy. In the Westchester Action, in addition to  
18 seeking redress in connection with Superboy, Siegel and Shuster sought to  
19 invalidate the March 1, 1938 Agreement, argued that the DCI September 22, 1938  
20 Agreement was obtained by duress, and sought to recapture all rights in Superman.

21           24. On November 21, 1947, the Court in the Westchester Action issued an  
22 opinion (the "Westchester Opinion") after trial in which it found that the March 1,  
23 1938 Agreement transferred to DCI all rights in Superman and that the DCI  
24 September 22, 1938 Agreement was valid and not obtained under duress. The  
25 Court also held that in publishing Superboy, DCI had acted "illegally."

26           25. At the Court's request, the parties to the Westchester Action  
27 submitted proposed fact findings and conclusions of law. On April 12, 1948, the  
28 Court adopted fact findings and conclusions of law and issued an interlocutory

1 judgment (collectively the “Westchester Action Interlocutory Judgment”). The  
2 defendants in the Westchester Action filed a notice of appeal, and the Westchester  
3 Action Interlocutory Judgment was stayed pending appeal.

4         26. Shortly thereafter, the parties to the Westchester Action entered into  
5 two separate agreements: (a) a stipulation dated May 19, 1948 (the “May 19, 1948  
6 Stipulation”) and (b) a consent judgment dated May 21, 1948 (the “May 21, 1948  
7 Consent Agreement”). Under both documents, *inter alia*, Siegel and Shuster: (a)  
8 agreed to vacate the Westchester Action Interlocutory Judgment; (b) acknowledged  
9 that, pursuant to the March 1, 1938 Agreement, they transferred to DCI all rights in  
10 and to Superman, including “the title, names, characters, concept and formula” as  
11 set forth in Action Comics No.1; (c) acknowledged National was sole and  
12 exclusive owner of Superman, the conception, idea, continuity, pictorial  
13 representation and formula thereof in all media; (d) agreed that they were enjoined  
14 from creating, publishing or distributing any Superman work or any imitation  
15 thereof, and from using the title Superman or title that contained the word “Super”;  
16 (e) acknowledged that National was the sole owner of and owned exclusive rights  
17 in Superboy; (f) agreed that they were enjoined from creating, publishing or  
18 distributing Superboy or any imitation thereof; (g) agreed they were prohibited  
19 from representing their past connection with Superman and Superboy in such a  
20 way to confuse the public that such connection still existed; and (h) agreed they  
21 were prohibited from using any coloring, lettering or printing in referring to  
22 Superman or Superboy that was imitative of that used by National.

23         27. In the 1960s, Siegel and Shuster again brought suit against National,  
24 this time in the United States District Court for the Southern District of New York  
25 for a declaration that they (and not National) owned the copyright in the renewal  
26 copyright term for Action Comics No. 1. In a decision published in *Siegel v.*  
27 *National Periodical Publications, Inc.*, 364 F. Supp. 1032 (S.D.N.Y. 1973), the  
28 district court held, *inter alia*, that the agreements between Siegel and Shuster on

1 the one hand and DCI (and later National) on the other, intended to assign all rights  
2 in Superman to DCI and National, including renewal copyright rights.

3 28. In a decision published in *Siegel v. National Periodical Publications,*  
4 *Inc.*, 508 F.2d 909 (2d Cir. 1974), the Court of Appeals affirmed that portion of the  
5 lower court's ruling relating to National's ownership of all rights in Superman.  
6 Siegel and Shuster did not further appeal the ruling.

7 29. On December 23, 1975, Siegel and Shuster entered into an agreement  
8 with Warner Communications, Inc., then National's parent company (the  
9 "December 23, 1975 Agreement"). Under this agreement, Siegel and Shuster  
10 again acknowledged that Warner Communications, Inc. was the sole and exclusive  
11 owner of "all right, title and interest in and to the 'Superman' concept, idea,  
12 continuity, pictorial representation, formula, characters, cartoons and comic strips,  
13 title, logo, copyrights and trademarks, including any and all renewals and  
14 extensions of such rights, in the United States and throughout the world, in any and  
15 all forms of publication, reproduction and presentation, whether now in existence  
16 or hereafter devised . . . ."

17 30. Under the December 23, 1975 Agreement, Siegel and Shuster each  
18 were to and did receive throughout their lives annual payments as well as medical  
19 insurance coverage. Upon Siegel's death, annual payments were to be made to  
20 Plaintiff/Counterclaim Defendant Joanne Siegel for the remainder of her life. The  
21 amount of the annual payment pursuant to the December 23, 1975 Agreement was  
22 increased over the years. Since Siegel's passing in 1996, Joanne Siegel has  
23 continuously received and accepted annual payments and health insurance under  
24 that agreement.

25 **DC Comics' Development And Licensing**  
26 **Of Superman Works And Products**

27 31. The initial graphic representations of the Superman character in 1938,  
28 now stylistically dated, presented his adventures with a limited number of

1 characters in settings that had the look and feel of that particular period. From the  
2 portrayal of the Superman character in "Action Comics No. 1," we only know that  
3 he is an upright hero who was sent as an infant to Earth aboard a space ship from  
4 an unnamed distant planet destroyed by old age. Superman is also depicted as  
5 secretly possessed of extraordinary physical abilities, including superhuman  
6 strength and the ability to leap 1/8<sup>th</sup> of a mile, hurdle a twenty-story building and  
7 run faster than an express train. In his ordinary life, the character is depicted as a  
8 mild-mannered newspaper reporter for The Daily Star known as Clark Kent, and in  
9 his alter ego, Superman is a costumed heroic figure using his extraordinary  
10 physical abilities to fight against crime.

11 32. Since the publication of "Action Comics No.1," DC Comics has  
12 authored, published and distributed several thousand other comic books containing  
13 the adventures of Superman throughout the United States and abroad in many  
14 millions of copies, adding more than 60 years worth of material to further define,  
15 update and improve upon the Superman character and presenting an ongoing new  
16 flow of Superman exploits and characters resulting in the creation of an entire  
17 fictional Superman "universe."

18 33. In addition to the publication of new comic books containing the  
19 Superman comic strip character, DC Comics has over the last 66 years participated  
20 in the creation, development and licensing of numerous Superman live action and  
21 animated feature length motion pictures, motion picture serials, radio and  
22 television serials and live theatrical presentations. These works have also  
23 significantly contributed to the modernizing and evolution of the Superman  
24 character from his 1938 appearance.

25 34. Over the years since Action Comics No.1, the presentations of  
26 Superman provided first by DCI and then DC Comics did not present a static  
27 depiction but an ever-evolving portrayal of Superman continuously, featuring new  
28 super powers, new villains, new components to the Superman universe, new

1 elements in the Superman back story, and changes in the appearance of Superman.  
2 Most notably, many of Superman's powers that are among his most famous today  
3 did not appear in Action Comics No. 1 but only appeared in later publications.  
4 These include: his ability to fly; his super-vision which enables him to see through  
5 walls ("X-ray" vision) and across great distances ("telescopic" vision); his super-  
6 hearing which enables him to hear conversations at great distances; his  
7 invulnerability to injury which is most often shown as bullets bouncing off his  
8 chest and/or arms.

9       35. One notable part of the evolution of the appearance of the Superman  
10 character undertaken by DC Comics and its predecessors, has been the  
11 transformation of the emblem on the chest of Superman's costume. In Action  
12 Comics No. 1, the emblem was comprised of a small yellow inverted triangle  
13 bearing the letter "S" shown in yellow and sometimes in red (the "Action Comics  
14 No. 1 Crest"). Thereafter, in changing the appearance of Superman and his  
15 costume, DC Comics and/or its predecessors significantly changed the Action  
16 Comics No. 1 Crest. Bearing little if any resemblance to the original, it is now a  
17 large yellow five-sided shield, outlined in the color red, and bearing the letter "S"  
18 in the middle, also in the color red (the "S in Shield Device"). The S in Shield  
19 Device, as transformed by DC Comics and its predecessors, has become a strong  
20 symbol, standing alone, of all goods and services relating to Superman and his sole  
21 source, DC Comics and its predecessors.

22       36. At all relevant times, DC Comics, its predecessors in interest and  
23 licensees have duly complied with the provisions of the 1976 Copyright Act and its  
24 1909 predecessor statute with respect to securing copyright protection for the  
25 numerous works in which the Superman character has appeared and establishing  
26 DC Comics' copyright ownership thereof, including the original and all works  
27 based upon and derived therefrom, and have received from the Register of  
28

1 Copyrights, valid and subsisting certificates of copyright registration and renewal  
2 with respect thereto.

3 37. DC Comics and its predecessors have, since 1938, continuously held  
4 themselves out as the exclusive owners of all rights under copyright in Superman.

5 38. DC Comics has over many decades adopted and made long,  
6 continuous and exclusive use of (a) the name and mark Superman and (b) certain  
7 key symbols and indicia of origin in connection with and to identify all authorized  
8 uses of the Superman character in print and all other media (sometimes hereinafter  
9 the "Superman symbols and indicia of origin"). The Superman name and mark  
10 and Superman symbols and indicia of origin include, *inter alia*, Superman's  
11 characteristic outfit, comprised of a full length blue leotard with red cape, a yellow  
12 belt, the S in Shield Device, as well as certain key identifying phrases. Most  
13 notable among the latter is "Look!...Up in the sky!...It's a bird!...It's a  
14 plane!...It's Superman!" first used in the introduction to the 1940 radio program  
15 The Adventures of Superman, and thereafter continuously repeated in Superman  
16 television programming and various Superman publications. All of these  
17 Superman symbols and indicia of origin have been used on and in connection with  
18 a wide variety of publications and licensed goods and services, as they have been  
19 added to the Superman character and mythology under DC Comics' and/or its  
20 predecessors' supervision and direction, but, in any event, for the earliest symbols,  
21 since as early as 1938.

22 39. As a result of the above-described continuous and exclusive use by  
23 DC Comics of the Superman name and mark, as well as the Superman symbols and  
24 indicia of origin for over sixty years, the names, marks and symbols and the  
25 appearance of the Superman character have become famous and the public has  
26 come to recognize that all publications, entertainment and products featuring  
27 Superman or bearing such marks all come from the same source, namely, DC  
28

1 Comics, and that DC Comics is the exclusive source of the Superman character  
2 and all uses of the character on and in connection with any goods and services.

3 40. DC Comics owns dozens of federal trademark registrations for  
4 Superman related indicia across a broad array of goods and services. Those  
5 registrations include, but are not limited to the following for the following marks:

6 (a) SUPERMAN (in block letters) Reg. Nos. 2,419,510, 2,204,195, 1,278,177,  
7 1,221,718, 1,209,668, 1,175,907, 1,183,841, 1,248,822, 1,216,976, 1,186,803,  
8 1,189,393, 1,180,068, 1,184,822, 1,181,536, 1,182,947, 1,070,290; (b)  
9 SUPERMAN (in the well-known “telescopic” lettering) Reg. Nos. 2,226,026,  
10 1,278,175, 1,200,394, 1,185,526, 1,185,853, 1,209,863, 1,220,896, 1,183,809,  
11 1,182,226, 1,181,537, 1,189,355, 1,218,552, 1,108,577, 391,821, 371,803; (c) the  
12 “S in Shield” Device (either alone or as part of a rendering of Superman)  
13 2,211,378, 2,226,415, 1,262,572, 1,179,537, 1,197,814, 1,200,387, 1,200,233,  
14 1,209,743, 1,201,167, 1,201,149, 1,229,321, 1,199,690, 1,199,552, 1,199,630,  
15 1,184,881, 1,182,172, 1,189,376, 1,180,292, 1,178,048, 1,182,041, 1,173,150,  
16 1,140,418, 1,235,769, 411,871; (d) SUPERMAN RIDE OF STEEL Reg. No.  
17 2,485,624; (e) MAN OF STEEL Reg. Nos. 2,226,436, 1,433,864; (f) SUPERBOY  
18 Reg. Nos. 394,923 (telescopic lettering), 1,221,719 (block letters); (g)  
19 SUPERGIRL (stylized and in block letters) Reg. Nos. 987,395, 414,623,  
20 1,238,334; (h) SUPERWOMAN (in telescopic lettering) Reg. No. 394,922; (i)  
21 SMALLVILLE Reg. Nos. 2,626,700, 2,809,352, 2,768,213, 2,765,711, 2,882,881;  
22 (j) KRYPTONITE Reg. Nos. 2,656,1,239,506; (k) KRYPTO Reg. No. 1,168,306;  
23 (l) LOOK, UP IN THE SKY, IT’S A BIRD, IT’S A PLANE Reg. No. 1,527,304;  
24 (m) LEX LUTHOR Reg. Nos. 2,802,600, 1,634,007; (n) LOIS LANE Reg. No.  
25 1,184,702; (o) PERRY WHITE Reg. No. 1,184,703; (p) JIMMY OLSEN Reg. No.  
26 1,190,637; (q) LOIS AND CLARK Reg. No. 1,990,231; and (r) ACTION  
27 COMICS (stylized) 360,765 (collectively with the SUPERMAN symbols and  
28 indicia of origin, the “Superman Marks”).

1           41.    These registrations alone suffice to show the unusual breadth and  
2 scope of the use of such marks related to Superman by DC Comics or its licensees  
3 on or in connection with a broad range of goods and services, all of which have  
4 come to be seen over six decades by countless consumers as indicating an  
5 exclusive authorization or sponsorship thereof by plaintiff DC Comics, the  
6 publisher and source of all Superman comic books and other Superman  
7 productions and products.

### 8                           **The Superman Notices Of Termination**

9           42.    On April 8, 1997, DC Comics received from Plaintiffs' Counterclaim  
10 Defendants Joanne Siegel and Laura Siegel Larson, through their then-counsel,  
11 Finnegan, Henderson, Farabow, Garrett & Dunner, seven documents entitled  
12 Notice of Termination of Transfer Covering Extended Renewal. Those documents  
13 purport, under 17 U.S.C. § 304 (c), to terminate, effective April 16, 1999, the  
14 Siegels' share in the following grants of copyright: (a) the December 4, 1937  
15 Agreement; (b) the March 1, 1938 Agreement; (c) the DCI September 22, 1938  
16 Agreement; (d) the McClure September 22, 1938 Agreement; (e) the December 19,  
17 1939 Agreement; (f) the May 19, 1948 Stipulation; (g) the December 23, 1975  
18 Agreement (collectively the "Superman Notices"). However, the Siegels served no  
19 notice terminating their share of the copyright grant in the May 21, 1948 Consent  
20 Agreement.

21           43.    The Superman Notices purport to terminate the Siegels' share of the  
22 above grants listed therein in the Unpublished Superman Works, Action Comics  
23 No. 1, and in excess of 15,000 additional works (the "Post-Action Comics No. 1  
24 Works"). However, in none of the seven Superman Notices, or anywhere else, do  
25 the Siegels purport to terminate their share of any copyright grant in the Superman  
26 Ads.

27           44.    In the Superman Notices, the Siegels expressly recognize and  
28 acknowledge that the character Superboy is a derivative work based on Superman.

1 The Superman Notices expressly identify Superboy as part of the Superman  
2 “family” of characters in which the Siegels are purporting to terminate their grants.  
3 Indeed, the more than 15,000 works listed in the Superman Notices include  
4 hundreds of publications and other works that feature *only* Superboy (as opposed  
5 to Superman), and also Superman No. 1 with a cover date of Summer 1939, in  
6 which Superman is depicted as a youth.

7 45. In late November, 1998, DC Comics received from Plaintiffs/  
8 Counterclaim Defendants Joanne Siegel and Laura Siegel Larson, through their  
9 then-counsel, Finnegan, Henderson, Farabow, Garrett & Dunner, four documents  
10 entitled Notice of Termination of Transfer Covering Extended Renewal. Those  
11 documents purport to terminate, effective November 27, 2000, the Siegels’ share in  
12 the following grants of copyright relating to the character known as “The Spectre”:  
13 (a) the December 4, 1937 Agreement; (b) a September 22, 1938 Agreement; (c)  
14 and October 10, 1939 Agreement and (d) a second October 10, 1939 Agreement  
15 (collectively the “Spectre Notices”).

16 46. The Spectre Notices purport to terminate the Siegels’ share of the  
17 above grants in: (a) the Spectre character appearing in costume in an ad in issue  
18 No. 51 of “More Fun Comics” with a cover date of January 1940; (b) the first  
19 Spectre comic book story published in issue No. 52 of “More Fun Comics” with a  
20 cover date of February 1940; (c) part 2 of the first Spectre comic book story  
21 published in issue No. 53 of “More Fun Comics” with a cover date of March 1940,  
22 and hundreds of additional works listed the Spectre Notices (collectively the  
23 “Spectre Works”).

#### 24 **The Parties’ Negotiations**

#### 25 **And The Agreement Reached**

26 47. On April 17, 1997, less than ten days after DC Comics received the  
27 Superman Notices, its counsel wrote to the Siegels’ counsel inviting negotiation.  
28 The Siegels requested that DC Comics make an initial settlement proposal. But

1 prior to making such proposal, DC Comics requested that the parties enter into a  
2 confidentiality agreement. Frustrated by the Siegels' delay in responding to its  
3 proposed form confidentiality agreement, on November 5, 1997, DC Comics'  
4 counsel wrote the Siegels' counsel and stated, *inter alia*, "[a]s we had advised you  
5 in the past, our client has elected, for settlement purposes only, not to respond to  
6 the [Superman Notices] served upon them by challenging their validity or scope *at*  
7 *this time*." (Emphasis added.)

8 48. On December 17, 1997, DC Comics and the Siegels finally entered  
9 into a confidentiality agreement. On December 18, 1997, DC Comics forwarded  
10 its first substantive proposal with respect to the copyrights at issue, and in  
11 connection therewith also raised certain defects in the termination notice, stating  
12 "that there is a substantial legal issue as to the effectiveness of your clients'  
13 termination of DC's interest in the Superman Comic." For more than six months,  
14 despite repeated requests for feedback, DC Comics heard no response to its  
15 December 18, 1997 proposal. Finally, on June 19, 1998, the Siegels' counsel sent  
16 a letter to DC Comics' counsel that did not respond to the proposal but only  
17 requested more information.

18 49. On July 23, 1998, DC Comics provided the Siegels with the answers  
19 to the questions posed in their counsel's letter of June 19, 1998. Despite requests  
20 for feedback for another several months, DC Comics again received no response to  
21 its proposal.

22 50. Having heard no response from the Siegels, on April 15, 1999, one  
23 day before the purported "Effective Date" set forth in the Superman Notices, DC  
24 Comics provided a more comprehensive written notice to Plaintiffs/Counterclaim  
25 Defendants Joanne Siegel and Laura Siegel Larson detailing, among other things,  
26 the reasons it considered the Superman Notices to be invalid.

27 51. On April 30, 1999, DC Comics received a letter from the firm of  
28 Gang, Tyre, Ramer & Brown, Inc. ("Gang, Tyre") indicating it now represented

1 the Siegels in negotiations with DC Comics. Thereafter, the parties engaged in  
2 extensive negotiations with their respective lawyers attending meetings in  
3 California and New York, and exchanging proposals. During that time period, at  
4 the Siegels' request, DC Comics provided a payment of \$250,000 (the "Advance  
5 Payment") to the Siegels which payment was agreed to be an advance against any  
6 future sums provided under an agreement to be entered into between the parties.

7 52. On October 16, 2001, a legal representative for DC Comics made an  
8 offer to the Siegels through Gang, Tyre by telephone. On October 19, 2001, Kevin  
9 Marks of Gang, Tyre, on behalf of the Siegels, accepted the October 16, 2001  
10 offer. That day, Mr. Marks wrote a letter confirming that the Siegels had  
11 "accepted D.C. Comics offer of October 16, 2001" and outlined all of the material  
12 terms in detail. Those terms included, *inter alia*, that the Siegels transferred all of  
13 their rights in the Superman property (which was defined in the letter as Superman,  
14 Superboy and related properties including but not limited to Supergirl, Steel, Lois  
15 & Clark, and Smallville) and in "The Spectre." In exchange, the Siegels were to  
16 receive: (a) a sizeable non-returnable advance; (b) a sizeable non-recoupable and  
17 non-returnable signing bonus; (c) "forgiveness" of the Advance Payment; (d)  
18 significant guaranteed minimum payments as advances against royalties; and (e)  
19 percentage royalties from DC Comics' exploitations of Superman across all media,  
20 worldwide.

21 53. By return letter of October 26, 2001, DC Comics' representative  
22 wrote back providing a "more fulsome outline" of the agreed upon points. Neither  
23 the Siegels nor any of their representatives in any way disputed the October 26,  
24 2001 confirmatory outline from DC Comics. On February 1, 2002, DC Comics  
25 forwarded a draft of a more formal written agreement memorializing the terms  
26 agreed to in the October 19 and 26, 2001 correspondence.

27 54. On May 9, 2002, Plaintiff/Counterclaim Defendant Joanne Siegel  
28 wrote a letter to the Co-Chief Operating Officer of DC Comics' parent company

1 acknowledging that the Siegels had accepted DC Comics' proposal of October 16,  
2 2002, but purporting to object to unspecified provisions of the formal written  
3 agreement. To this day, the Siegels have not identified a single provision of the  
4 February 1, 2002 formal draft that was inconsistent with the provisions in the  
5 Siegels' October 19, 2001 acceptance of DC Comics' proposal.

6 55. On September 30, 2002, however, DC Comics received a letter from  
7 the Siegels stating they were breaking off all discussions with DC Comics and  
8 impliedly and purportedly repudiating the agreement already reached by the  
9 parties.

### 10 **The Superboy Termination Notices**

11 56. Notwithstanding the fact that the Siegels had already purported to  
12 terminate grants with respect to the Superboy character effective April 16, 1999,  
13 on November 8, 2002, the Siegels mailed to DC Comics another Notice of  
14 Termination of Transfer purporting to relate solely to Superboy (the "Superboy  
15 Notice"). The Superboy Notice purports to terminate, effective November 17,  
16 2004, only two grants of copyright: (a) the May 19, 1948 Stipulation and (b) the  
17 December 23, 1975 Agreement, and identifies many of the same works identified  
18 in the Superman Notices. As was the case with the Superman Notices, the Siegels  
19 served no notice terminating the copyright grant in the May 21, 1948 Consent  
20 Agreement.

21 57. The Superboy Notice purports to terminate the above grants regarding  
22 the following works: (a) the unpublished November 30, 1938 Letter; (b) the  
23 unpublished 1940 Superboy Script; (c) More Fun Comics No. 101; and (d)  
24 approximately 1,600 additional titles. However, the Superboy Notice lists and  
25 purports to terminate grants of rights under copyright relating to hundreds of the  
26 same works already purportedly terminated by the earlier Superman Notices. The  
27 Superboy Notice does not purport to terminate the 1939 depiction of Superman as  
28 a youth in Superman No. 1.

1           58. In the Superboy Notice, the Siegels make the claim that Superboy is a  
2 “separate and distinct copyrighted work and character from the copyrighted work  
3 and character Superman.” This contention is erroneous.

4           59. In the Superboy Notices, the Siegels also claim that Jerome Siegel  
5 was the sole author of Superboy. This contention is also erroneous.

6           60. Among the works listed in the Superboy Notice that the Siegels claim  
7 are terminated by such notice of termination (as well as by the Superman Notices),  
8 is the WB television series entitled “Smallville.” “Smallville” is a modern, teen-  
9 oriented drama about the life and relationships of Clark Kent and his circle of  
10 friends during Clark’s high school years; it features numerous characters not  
11 created or developed by Siegel and story lines wholly original to the series.

12           61. On June 17, 2004, talent agent Ari Emanuel, representing the Siegels,  
13 sent a letter to DC Comics’ licensee and affiliated company, Warner Bros., stating,  
14 *inter alia*, that as of the effective date of the Superboy Notice, November 17, 2004,  
15 DC Comics and its licensees would be cut off from making any further episodes of  
16 “Smallville”

17           62. On August 4, 2004, the Siegels’ new counsel and attorney of record in  
18 this case, Marc Toberoff, contacted Warner Bros. and reiterated the Siegels’  
19 position that, as of November 17, 2004, DC Comics and its licensees would be cut  
20 off from making any further episodes of “Smallville.”

21           63. On August 27, 2004, DC Comics’ counsel herein, Fross Zelnick  
22 Lehrman & Zissu, P.C., sent a letter to the Siegels’ counsel rejecting the  
23 interpretation of the effect of the Superboy Notice and unequivocally informing the  
24 Siegels that DC Comics and its licensees would proceed with their planned  
25 production, copying, distribution, and exploitation of new episodes of “Smallville.”  
26  
27  
28

1                                   **The Siegels' Filing Of Two Related Cases**

2           64.    On October 8, 2004, the Siegels filed the instant action and on  
3   October 22, 2004, they filed a second action, Civil Case No. 04-08776, which case  
4   was assigned to Judge Lew in this Court.

5                                   **FIRST COUNTERCLAIM FOR DECLARATION THAT THE**  
6                                   **SUPERMAN NOTICES AND THE SUPERBOY NOTICE ARE**  
7                                   **INEFFECTIVE**

8           65.    DC Comics repeats and realleges paragraphs 1 - 64 above as if fully  
9   set forth herein.

10          66.    DC Comics contends that the Superman Notices and/or the Superboy  
11   Notice are ineffective, *inter alia*, for any or all of the following five independent  
12   reasons:

13                               **#1 The May 21, 1948 Consent Agreement Has Not Been Terminated**

14          67.    The May 21, 1948 Consent Agreement is a written agreement entered  
15   into by Jerome Siegel and Joseph Shuster with DC Comics' predecessor in interest  
16   and includes a grant of all rights in Superman and Superboy by Siegel and Shuster  
17   to DC Comics' predecessor in interest, including all rights under copyright therein.

18          68.    As a result of the Siegels' failure to send a Notice of Termination with  
19   respect to the May 21, 1948 Consent Agreement, the grant contained therein to all  
20   copyrights related to Superman remains in full force and effect. Thus, DC Comics  
21   is and continues to be the sole owner of all rights of any kind, including rights  
22   under copyright, in Superman (including its derivative work Superboy) pursuant to  
23   the May 21, 1948 Consent Agreement.

24                               **#2 The December 23, 1975 Agreement**

25          69.    Through both the Superman Notices and the Superboy Notice, the  
26   Siegels purport to terminate their share of the grant of copyright in Superman and  
27   Superboy contained in the December 23, 1975 Agreement.

1           70. By letter dated April 15, 1999, the day before the Superman Notice  
2 purported to become effective, DC Comics rejected the scope and validity of the  
3 Superman Notices, including but not limited to, that Superman Notice purporting  
4 to terminate the grant in the December 23, 1975 Agreement.

5           71. By letter dated August 29, 2004, DC Comics rejected the scope and  
6 validity of the Superboy Notice, including but not limited to the Siegels' claim that  
7 such notice terminated the December 23, 1975 Agreement.

8           72. Notwithstanding the Siegels having, by virtue of the Superman  
9 Notices, purportedly terminated the grant of copyright contained in the December  
10 23, 1975 Agreement, and with full knowledge of DC Comics' rejection of the  
11 Superman Notice, after April 16, 1999, the purported effective date of such notices  
12 of termination, DC Comics continued to perform under the December 23, 1975  
13 Agreement and Plaintiff/Counterclaim Defendant Joanne Siegel continued to  
14 accept the benefits under that agreement. DC Comics has relied upon Joanne  
15 Siegel's continued acceptance of benefits under the December 23, 1975 Agreement  
16 and has continued to perform under that Agreement without accounting to the  
17 Siegels and without making any other change in the manner in which it has  
18 exploited Superman.

19           73. Notwithstanding the Siegels having, by virtue of the Superboy Notice,  
20 purportedly terminated the grant of copyright contained in the December 23, 1975  
21 Agreement, and with full knowledge of DC Comics' August 29, 2004 rejection of  
22 the notice of termination, DC Comics has continued to perform under the  
23 December 23, 1975 Agreement. DC Comics has relied upon Joanne Siegel's  
24 continued acceptance of benefits under the December 23, 1975 Agreement and has  
25 continued to perform under that Agreement without accounting to the Siegels and  
26 without making any other change in the manner in which it has exploited  
27 Superboy.  
28

1           74. Because of DC Comics' continued performance under the December  
2 23, 1975 Agreement and Plaintiff/Counterclaim Defendant Joanne Siegel's  
3 continued acceptance of the benefits of such agreement after she purportedly  
4 terminated it in both the Superman Notices and the Superboy Notice, the  
5 December 23, 1975 Agreement, and the grant of copyright therein, remains in full  
6 force and effect.

7           75. Thus, DC Comics is and continues to be the sole owner of all rights of  
8 any kind, including rights under copyright, in Superman (and its derivative work  
9 Superboy), rendering the Superman Notices and the Superboy Notice ineffective.

### 10                           **#3 The Unpublished Superboy Works**

11           76. In the Superboy Notice, the Siegels purport to terminate copyright  
12 grants of rights in the November 1938 Letter and the Unpublished 1940 Superboy  
13 Script and approximately 1,600 additional published titles purportedly relating to  
14 Superboy (the "Published Superboy Works").

15           77. Upon information and belief, as of January 1, 1978, both the  
16 November 1938 Letter and the Unpublished 1940 Superboy Script (the "Siegel  
17 Superboy Proposals") remained unpublished and thus were neither in their first nor  
18 their second term of copyright as of that date.

19           78. Copyright in the Published Superboy Works is owned exclusively by  
20 DC Comics by virtue of their having been prepared as works made for hire for DC  
21 Comics' and/or its predecessors, or by virtue of other copyright grants that remain  
22 in full force and effect.

23           79. Pursuant to the requirements set forth by section 304 (c) of the 1976  
24 Copyright Act, 17 U.S.C. § 304 (c), only copyright grants in works that were in  
25 their first or second term of copyright as of January 1, 1978, could be terminated  
26 under that provision. As a result, the Superboy Notice is ineffective as to the  
27 Siegel Superboy Proposals or any portion of any derivative works containing any  
28

1 copyrightable material therefrom and DC Comics remains the sole owner thereof.  
2 Therefore, the Superboy Notice is ineffective.

#### 3 **#4 Siegel Owned No Copyright In Superboy**

4 80. The Siegel Superboy Proposals are derivative works based upon the  
5 pre-existing copyrighted Superman character and stories owned by DC Comics'  
6 predecessors.

7 81. Upon information and belief, Siegel, in collaboration with Shuster,  
8 prepared the Siegel Superboy Proposals without the prior knowledge or consent of  
9 DC Comics' predecessors.

10 82. Upon further information and belief, Siegel developed the contents of  
11 the Siegel Superboy Proposals within the scope of his employment contracts with  
12 DC Comics' predecessors and/or at their instance and expense and subject to their  
13 right to control.

14 83. As a result of the foregoing, the Siegel Superboy Proposals were  
15 derivative works based upon Superman, prepared without the authorization of the  
16 copyright owner, and/or were works made for hire, owned *ab initio* by the  
17 copyright owner in Superman.

18 84. Whether the Siegel Superboy Proposals were derivative works  
19 prepared without the prior authorization of the copyright owner, or were works  
20 made for hire, Siegel could not and did not own any copyright interest therein that  
21 would be subject to copyright termination pursuant to 17 U.S.C. § 304 (c). Thus,  
22 the Superboy Notice is ineffective.

#### 23 **#5 The Superman Notices Were Not Timely Served**

24 85. Upon information and belief, DC Comics' predecessor in interest first  
25 secured copyright in Action Comics No. 1 by publication with copyright notice  
26 prior to April 16, 1938.

27 86. All grants made by Siegel and Shuster or rights in Action Comics No.  
28 1 are still in effect, and all rights under copyright granted therein are still owned

1 exclusively by DC Comics, because the Superman Notices served by the Siegels  
2 are ineffective for failure to comply with the legal requirements therefore  
3 prescribed by section 304 (c) of the U.S. Copyright Act of 1976, 17 U.S.C. § 304  
4 (c), in that: the “Effective date” of the Superman Notices, namely April 16, 1999,  
5 was too late to fall within the required period specified in 17 U.S.C. § 304 (c) (3)  
6 and such notices of termination were served less than two years before the  
7 allowable effective date in violation of 17 U.S.C. § 304 (c) (4) (A).

8 87. On information and belief, plaintiffs deny DC Comics’ contentions  
9 and/or the legal effect ascribed thereto as set forth in paragraphs 65 – 86 above.  
10 Accordingly, an actual controversy has arisen and now exists between  
11 Plaintiffs/Counterclaim Defendants and DC Comics concerning the above issues.

12 88. A justiciable controversy exists concerning the above issues and a  
13 judicial declaration is necessary and appropriate to determine the parties’  
14 respective rights with regard thereto.

15 **SECOND ALTERNATIVE COUNTERCLAIM FOR**  
16 **DECLARATION THAT ANY CLAIM BY THE SIEGELS FOR**  
17 **CO-OWNERSHIP OF SUPERMAN (INCLUDING ITS DERIVATIVE**  
18 **SUPERBOY) IS BARRED BY THE STATUTE OF LIMITATIONS**

19 89. DC Comics repeats and realleges paragraphs 1 - 88 above as if fully  
20 set forth herein.

21 90. Since as early as 1998, Plaintiffs/Counterclaim Defendants were on  
22 notice of DC Comics’ position that the Superman Notices contained legal defects.  
23 Moreover, effective at least as early as April 15, 1999, Plaintiffs/Counterclaim  
24 Defendants were on notice that DC Comics rejected the Superman Notices and  
25 asserted exclusive ownership of all copyright in Superman.

26 91. Since April 16, 1999, the purported effective date of the Superman  
27 Notices, Plaintiffs/Counterclaim Defendants have been deprived of the benefits of  
28 their purported co-ownership of copyright in Action Comics No. 1.

1           92. In response to DC Comics' above actions and assertion and such  
2 deprivation to the Siegels of the benefits of their alleged copyright co-ownership,  
3 Plaintiffs/Counterclaim Defendants took no action until filing the instant action on  
4 October 8, 2004, more than six years after DC Comics advised  
5 Plaintiffs/Counterclaim Defendants in writing of defects in the Superman Notices  
6 and more than five years after being placed on notice by DC Comics of its claim of  
7 exclusive ownership of copyright in Superman and that it rejected and repudiated  
8 the Superman Notices and during which time period the Siegels were deprived of  
9 benefits to which they claim they are entitled.

10           93. Because Plaintiffs/Counterclaim Defendants' claim of partial  
11 ownership of copyright accrued more than three years prior to  
12 Plaintiffs/Counterclaim Defendants bringing the instant action, even taking into  
13 consideration any purported agreements to toll the statute of limitations, any claim  
14 of ownership of copyright in Superman by Plaintiffs/Counterclaim Defendants is  
15 barred by the three-year statute of limitations of the Copyright Act.

16           94. On information and belief, plaintiffs deny DC Comics' contentions  
17 and/or the legal effect ascribed thereto as set forth in paragraphs 89 – 94 above.  
18 Accordingly, an actual controversy has arisen and now exists between  
19 Plaintiffs/Counterclaim Defendants and DC Comics concerning the above issues.

20           95. A justiciable controversy exists concerning the above issues and a  
21 judicial declaration is necessary and appropriate to determine the parties'  
22 respective rights with regard thereto.

23           **THIRD ALTERNATIVE COUNTERCLAIM FOR ENFORCEMENT**  
24           **OF SETTLEMENT AGREEMENT BETWEEN THE PARTIES**

25           96. DC Comics repeats and realleges paragraphs 1 - 95 above as if fully  
26 set forth herein.

1           97. In the event the Superman Notices and/or the Superboy Notice are  
2 deemed effective, DC Comics asserts this alternative counterclaim for enforcement  
3 of the settlement agreement between the parties.

4           98. On October 16, 2001, DC Comics made an offer to settle the issues  
5 between the parties, which the Siegels, through their lawyers and authorized  
6 representative, Gang, Tyre, accepted by telephone and again in writing on October  
7 19, 2001. The terms accepted by the Siegels included all necessary material terms,  
8 including, *inter alia*, that the Siegels transferred to DC Comics and/or divested  
9 themselves of all of their claimed rights in the Superman property (which was  
10 defined in the letter as Superman, Superboy and related properties including but  
11 not limited Supergirl, Steel, Lois & Clark, and Smallville) and in a property called  
12 "The Spectre." In exchange, the Siegels were to receive: (a) a non-returnable  
13 advance; (b) a non-recoupable and non-returnable signing bonus; (c) "forgiveness"  
14 of the Advance Payment; (d) guaranteed minimum payments as advances against  
15 royalties; and (e) percentage royalties from DC Comics' exploitations of Superman  
16 across all media, worldwide.

17           99. Regardless of whether the Superman Notices and the Superboy Notice  
18 are valid and effective, DC Comics' offer and the Siegels' acceptance of such offer  
19 on October 19, 2001 letter represent an enforceable agreement, *inter alia*, settling  
20 all claims between the parties relating to the Superman Notices and the Superboy  
21 Notice.

22           100. The Siegels' purported repudiation of the agreement was a material  
23 breach of such agreement.

24           **FOURTH ALTERNATIVE COUNTERCLAIM FOR DECLARATION**  
25           **OF LIMITATIONS ON THE SCOPE OF THE SUPERMAN**  
26           **NOTICES AND THE SUPERBOY NOTICE**

27           101. DC Comics repeats and realleges paragraphs 1 - 100 above as if fully  
28 set forth herein.

1 102. In the event the Superman Notices and/or the Superboy Notice are  
2 deemed effective and the settlement agreement between the parties is not enforced,  
3 DC Comics asserts the following alternative counterclaim for a declaration limiting  
4 the scope and reach of the Superman Notices and the Superboy Notice in six  
5 separate and independent ways.

6 103. DC Comics contends that:

7 **#1 The Superman Ads**

8 104. The regulations governing the contents of notices of termination  
9 promulgated by the U.S. Copyright Office under authority of the 1976 Copyright  
10 Act require, in relevant part, that a notice of termination served pursuant to section  
11 304 (c) of the 1976 Copyright Act name “each work to which the notice of  
12 termination applies.”

13 105. Upon information and belief, all of the Superman Ads first secured  
14 copyright protection by publication with copyright notice prior to April 16, 1938  
15 and prior to publication of Action Comics No. 1.

16 106. The Superman Ads contain and show the appearance of Superman, his  
17 costume, and his super-strength.

18 107. The grants made by Siegel and Shuster as to the appearance of  
19 Superman, his costume, and his super-strength, are still in effect, and all rights  
20 under copyright granted therein are still owned exclusively by DC Comics,  
21 because the Superman Notices served by the Siegels do not list the works in which  
22 the Superman Ads were first published.

23 108. Thus, DC Comics is the exclusive owner of all copyright in and to the  
24 Superman Ads and thereby retains exclusive ownership of copyright in the  
25 appearance of Superman therein, including but not limited to, the appearance of the  
26 Superman costume.

**#2 Use Of Superman And Superboy Derivative Works  
Prepared Prior To The Purported Effective Dates Of The  
Superman Notices And The Superboy Notice**

109. The Superman Notices purport to terminate the Siegels' share in the copyright grant of Jerome Siegel in all Superman-related works thereafter derived from Action Comics No. 1, including but not limited to the more than 15,000 Superman related works (in addition to Action Comics No. 1) listed in the Superman Notices (the "Superman Derivative Works"). Included among the Superman Derivative Works is the image of the "S in Shield Device" that has become a strong trademark of Superman and his single source, DC Comics.

110. The Superboy Notice purports to terminate the Siegels' share in the copyright grant of Jerome Siegel in the approximately 1,600 of the Published Superboy Works.

111. The Superman Derivative Works and the Published Superboy Works are all based upon pre-existing works and were prepared under the authority of the grants of copyright entered into by Siegel and Shuster to DC Comics and/or its predecessors.

112. Regardless of whether the Superman Notices and the Superboy Notice are legally effective, under the Copyright Act, 17 U.S.C. § 304 (c)(6)(A), DC Comics retains the right to make use of the Superman Derivative Works and the Superboy Published Works under the terms of the original grants under which they were prepared without any duty to account to the Siegels for any such use.

**#3 DC Comics Owns All Superman Derivative Works**

113. All copyright rights in any of the works listed in the Superman Notices, or any other derivative works based upon and that post-date Action Comics No. 1 (the "Post Action Comics No. 1 Works") are owned exclusively by DC Comics. DC Comics' ownership of such copyrights is not subject to termination pursuant to the Copyright Act.

1 114. The Post Action Comics No. 1 Works contain many copyrightable  
2 elements not present in Action Comics No. 1 (the “Post Action Comics No. 1  
3 Elements”). These include, but are not limited to, new super powers, new villains,  
4 new components to the Superman universe, new elements in the Superman back  
5 story, and changes in the appearance of Superman. Notably, many of Superman’s  
6 powers that are among his most famous today did not appear in Action Comics No.  
7 1 but only appeared later in the Post Action Comics No. 1 Works.

8 115. Regardless of whether the Superman Notices and the Superboy Notice  
9 are valid and effective, DC Comics remains the sole owner of the Post Action  
10 Comics No. 1 Works and in the Post Action Comics No. 1 Elements. Moreover,  
11 the Siegels can make no use of the Post Action Comics No. 1 Elements.

#### 12 **#4 Superboy Is A Derivative Work Based On Superman**

13 116. In the November 1938, Letter suggesting the idea for a Superboy  
14 comic strip, Siegel stated such comic “would relate to the adventures of Superman  
15 as a youth.” In the Unpublished 1940 Superboy Script, Siegel wrote “[s]o many  
16 faithful followers of today’s leading adventure comic strip, SUPERMAN, wrote in  
17 demanding the adventures of Clark Kent as a youth . . . And so here he is at  
18 last...the answer to your requests...America’s outstanding boy hero:  
19 SUPERBOY!”

20 117. As demonstrated by the foregoing, the Siegel Superboy Proposals  
21 were based upon the pre-existing Superman character and stories and are thus  
22 derivative works based thereon, and were not made at the instigation of Siegel.

23 118. Thus, even if the Superboy Notice were effective, any recapture of  
24 copyright rights would be limited to any new copyrightable subject matter added  
25 by Siegel and Shuster to the pre-existing Superman character and stories  
26 exclusively owned by DC Comics and its predecessors.

27 119. The new copyrightable subject matter contained in the Siegel  
28 Superboy Proposals is *de minimis* and thus, even if the Siegels could recapture

1 U.S. Copyrights therein, such recapture could not affect DC Comics' continuing  
2 right to create and exploit new derivative works that do not include such new  
3 copyrightable subject matter, including but not limited to, the television series  
4 "Smallville."

5 **#5 The Derivative Work Superboy Is A Joint Work Of Authorship**

6 120. Upon information and belief, the Siegel Superboy Proposals were  
7 joint works of authorship as they were prepared jointly with Shuster and because it  
8 was intended that their contents would be merged with artwork to create a comic  
9 book or comic strip.

10 121. As eventually published, the works containing the Superboy character  
11 included both artwork and storyline.

12 122. The joint author's share in the Siegel Superboy Proposals is owned by  
13 DC Comics and cannot be terminated either by the Superman Notices or the  
14 Superboy Notice.

15 123. As a result of the foregoing, DC Comics right to continue to exploit  
16 the Siegel Superboy Proposals and any derivative works based thereon cannot be  
17 affected by either the Superman Notices or the Superboy Notice.

18 **#6 "Smallville" Is Not Derived From Superboy**

19 124. Among the derivative works based upon Superman and authorized by  
20 DC Comics is the weekly television series, "Smallville."

21 125. Regardless of whether the Superboy Notice is effective and further  
22 regardless of whether Superboy is a derivative work based upon Superman,  
23 "Smallville" was derived from and based upon Superman and is not a derivative  
24 work based upon the Siegel Superboy Proposals or any succeeding Superboy  
25 comic or Superboy work exploited by DC Comics and/or its predecessors prior to  
26 May 21, 1948. Beyond sharing the idea of depicting Superman as a youth,  
27 Smallville is not substantially similar to the Siegel Superboy Works.  
28

1 126. Thus, irrespective of any accounting issues relating to the Siegels'  
2 purported right to receive compensation with respect to new episodes of  
3 "Smallville," DC Comics' right to continue to authorize production, distribution,  
4 and airing of "Smallville" television episodes remains unaffected by the Superman  
5 Notices and the Superboy Notice.

6 **#7 The Additional Action Comics No. 1 Materials**

7 127. The Additional Action Comics No. 1 Materials created in 1938 were  
8 prepared at the instance and expense of DCI and subject to its right to control.  
9 Thus, under the 1909 Copyright Act, the Additional Action Comics No. 1  
10 Materials were "works made for hire" and copyright therein was owned by DCI *ab*  
11 *initio*.

12 128. Because the Additional Action Comics No. 1 Materials were works  
13 made for hire, the grant of U.S. Copyright therein cannot be terminated pursuant to  
14 17 U.S.C. § 304 (c). As a result, DC Comics remains the sole owner of the  
15 Additional Action Comics No. 1 Materials.

16 129. On information and belief, plaintiffs deny DC Comics' contentions  
17 and/or the legal effect ascribed thereto as set forth in paragraphs 102 - 128 above.  
18 Accordingly, an actual controversy has arisen and now exists between  
19 Plaintiffs/Counterclaim Defendants and DC Comics concerning the above issues.

20 130. A justiciable controversy exists concerning the above issues and a  
21 judicial declaration is necessary and appropriate to determine the parties'  
22 respective rights with regard thereto.

23 **FIFTH ALTERNATIVE COUNTERCLAIM FOR**  
24 **DECLARATION REGARDING THE PRINCIPLES**  
25 **TO BE APPLIED IN AN ACCOUNTING**

26 131. DC Comics repeats and realleges paragraphs 1 - 130 above as if fully  
27 set forth herein.  
28

1 132. DC Comics contends that in the event the Superman Notices and/or  
2 the Superboy Notice were deemed valid and effective, any accounting to which the  
3 Siegels would be entitled relating to Superman (including its derivative work  
4 Superboy, collectively for this Counterclaim "Superman") would be subject to the  
5 following limitations and reductions:

- 6 a. The Siegels would not be entitled to any revenues derived from  
7 exploitation of Superman outside of the United States because  
8 termination pursuant to 17 U.S.C. § 304 (c) cannot affect any grant of  
9 non-United States copyrights. 17 U.S.C. § 304 (c) (6) (E).
- 10 b. The Siegels would not be entitled to any revenues derived from  
11 exploitation of the Superman Derivative Works and the Superboy  
12 Derivative Works. 17 U.S.C. § 304 (c) (6) (A).
- 13 c. Any accounting of profits for exploitation of Superman would be  
14 reduced to account for the value of the appearance of Superman based  
15 upon the Siegels' failure to terminate the Superman Ads.
- 16 d. Any accounting of recoverable profits for exploitation of Superman  
17 would be reduced to that portion of such profits that are attributable to  
18 the copyrightable elements from Action Comics No. 1 less the  
19 Additional Action Comics No. 1 Materials (if any), actually present in  
20 the Superman works subject to accounting.
- 21 e. Any accounting of recoverable profits would be limited to profits of  
22 DC Comics, the sole owner of rights under any purportedly  
23 terminated grants and the sole owner of copyright in Action Comics  
24 No. 1, and the Siegels would not be entitled to any share of revenues  
25 earned by any third party licensees of DC Comics, including but not  
26 limited to, any of the other defendants.
- 27 f. The Siegels would not be entitled to any accounting for profits  
28 attributable to DC Comics' continuing exercise of its rights to use all

1 other rights other than rights under copyright with respect to  
2 Superman and Superboy, including but not limited to, any trademark  
3 rights. As a result, any accounting of profits would be further reduced  
4 by the value in Superman and the Superman Marks that have been  
5 built up by DC Comics and its predecessors over the last six decades  
6 by virtue of, *inter alia*, the Post Action Comics No. 1 Works and  
7 Elements, and the Superman Marks

8 g. Any accounting of profits would be further reduced by additional  
9 factors, including but not limited to, DC Comics' direct and indirect  
10 expenses, taxes, and DC Comics' independent role as a publisher of  
11 Superman.

12 h. Subject to all reductions aforesaid and otherwise determined by the  
13 Court to be applicable, the Siegels would be entitled to an accounting  
14 of only one-half of the copyright co-owner's profits.

15 133. On information and belief, plaintiffs deny DC Comics' contentions  
16 and/or the legal effect ascribed thereto as set forth above. Accordingly, an actual  
17 controversy has arisen and now exists between Plaintiffs/Counterclaim Defendants  
18 and DC Comics as to the above issues.

19 134. A justiciable controversy exists concerning the above issues and a  
20 judicial declaration is necessary and appropriate to determine the parties'  
21 respective rights with regard thereto.

22 WHEREFORE, DC Comics demands judgment as follows:

23 1. Declaring that the Superman Notices and the Superboy Notice are  
24 ineffective for one or more of the reasons set forth in DC Comics' First  
25 Counterclaim;

26 2. In the event that the Superman Notices and/or the Superboy Notice  
27 are deemed effective, enforcing the settlement agreement of all claims between the  
28 parties;

1           3.     In the event that the Superman Notices and/or the Superboy Notice  
2 are deemed effective, and the Court further finds that there is no enforceable  
3 settlement agreement between the parties, declaring that the scope and effect of the  
4 Superman Notices and the Superboy Notice are limited as set forth in DC Comics'  
5 Third Alternative Counterclaim

6           4.     In the event that the Superman Notices and/or the Superboy Notice  
7 are deemed effective, and the Court further finds that there is no enforceable  
8 settlement agreement between the parties, declaring that any accounting to which  
9 the Siegels may be entitled will be limited by all applicable principles, including  
10 but not limited to, those set forth in DC Comics Fourth Alternative Counterclaim.

11           5.     Awarding DC Comics its costs and reasonably attorneys' fees  
12 incurred in connection with DC Comics' defenses and claims herein seeking  
13 declarations with respect to copyright ownership; and

14           6.     Awarding DC Comics such other and further relief as may be just.

15 DATED:     November 22, 2004

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25                   Entertainment Inc., Time Warner Inc., and  
26                   Defendant and Counterclaimant DC Comics