EXHIBIT A

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DC COMICS,

Plaintiff,

v.

PACIFIC PICTURES CORPORATION, IP WORLDWIDE, LLC, IPW, LLC, MARC TOBEROFF, an individual, MARK WARREN PEARY, as personal representative of the ESTATE OF JOSEPH SHUSTER, JEAN ADELE PEAVY, an individual, LAURA SIEGEL LARSON, an individual and as personal representative of the ESTATE OF JOANNE SIEGEL, and DOES 1-10, inclusive,

Defendants.

Case No. CV 10-3633 ODW (RZx)

DISCOVERY MATTER

DC COMICS' *EX PARTE* APPLICATION TO LIFT TEMPORARY STAY ON COURT'S MAY 25, 2011, AND AUGUST 8, 2011, ORDERS

DECLARATION OF CASSANDRA SETO AND [PROPOSED] ORDER FILED CONCURRENTLY HEREWITH

Judge: Hon. Otis D. Wright II
Magistrate: Hon. Ralph Zarefsky

Requested Hearing Date: Apr. 30, 2012
Requested Hearing Time: 10:00 a.m.

MEMORANDUM OF POINTS & AUTHORITIES

Enough is enough. Eleven months ago this Court ordered defendants to produce the "Toberoff Timeline" documents they gave to the U.S. Attorney's Office ("USAO"). Docket No. 262. Weeks later the Court then ordered defendants to produce all of their communications with the government. Docket No. 309.

At defendants' request, the Court temporarily stayed the required productions to allow defendants to seek writ review in the Ninth Circuit. Docket Nos. 287, 309. In seeking and defending the stay, defendants promised to produce the documents once "the Ninth Circuit has the opportunity to weigh in" on their writ petition. Docket No. 286 at 4. That "opportunity" has now passed. After full briefing and oral argument, the Ninth Circuit issued a unanimous opinion last week denying defendants' petition, affirming this Court's ruling that defendants waived privilege over the Timeline documents, and affirming this Court's ruling that defendants shared no common-interest privilege with the USAO. *See* Appendix A.

In a last-ditch effort to suppress the Timeline documents and the devastating facts they disclose, defendants now assert that this Court's stay order should remain in place indefinitely—until defendants seek further review by the Ninth Circuit and perhaps the U.S. Supreme Court. Even then, defendants refuse to produce the documents unless all remain confidential and are hidden from the public. These are clear misreadings of this Court's orders and are causing severe prejudice to DC.

DC has two important appellate filings due in the Ninth Circuit on May 24, 2012. These briefs will reference and discuss the Timeline documents, as those documents are central to the issues being litigated in both appeals, and the Ninth Circuit has the discretion and good reason to consider them. If DC were required to follow the motion procedure set forth in Local Rule 7 to lift the Court's current stay, the earliest date such a noticed motion could be heard is June 4, 2012—*weeks after DC's appellate filings are due*. Defendants' express aim in seeking delay is to keep the crucial Timeline documents from DC and the Ninth Circuit.

Indeed, defendants' delay efforts have already begun, full force. Rather than file their petitions for review on May 1, when they are due, they moved yesterday for a 30-day extension to file their rehearing petitions. If this request is granted, defendants will not file their petitions until *after* DC's May 24 appellate briefs are due. But this is not all. The Ninth Circuit can take up to seven months to rule on en banc petitions, and while rehearing will undoubtedly be denied, defendants will have near 90 days to file a petition for certiorari. Months will then be spent briefing and resolving that baseless cert petition. In short, defendants seek to orchestrate a situation where DC *never* has access to the Timeline documents for any use, ever.

No more delay can or should be countenanced. Not only does DC need the Timeline and other documents for pending appellate filings, DC needs to take and resume key discovery in the case. Discovery was greatly impeded (especially on the deposition front) while the writ pended the past 11 months. No more delay in discovery, which is antecedent to a final resolution of this case, should be invited given the direct impact of these lawsuits on the Superman franchise. Defendants say their termination notices take effect in October 2013, and they clearly want to run the clock in this case before the validity of those notices is fully adjudicated.

These are not valid reasons for delay. This Court should order defendants to produce the Timeline documents and USAO communications immediately, without limitation, and by no later than April 30, 2012, at 5 p.m. PDT.

1. The Court's Stay Order and Defendants' Arguments In Support of It. Now that the Ninth Circuit has rejected defendants' writ petition, this Court should lift the stay on its May 25 and August 8, 2011, orders. Docket Nos. 262, 287, 309. In their opposition to DC's motion to compel production of the Timeline documents, defendants told this Court: "[A]t a minimum, any order from this Court requiring the production of privileged material should be *stayed pending writ review* in order to give the district court and *if necessary the Ninth Circuit* the opportunity to address the important privilege issues at stake here before any production is

request for a 30-day extension (until May 31) to file their rehearing petitions in the Ninth Circuit. Seto Decl. Ex. G. Whenever defendants' petitions are filed, the Ninth Circuit can take up to seven months to rule on them. *See* FED. R. APP. P. 40(a)(1); Ninth Circuit General Orders 5.4(b)-(c), 5.5(a)-(b). While rehearing will undoubtedly be denied, *see infra* at 10-13, defendants will then have close to 90 days to file a petition for certiorari, *see* 28 U.S.C. § 2101(c); Supreme Court Rule 13.1, 13.3, and it will then take several additional months to brief and resolve it.

a. DC needs the Timeline documents for soon-to-be-filed appellate briefs. Defendants have appealed the district court's denial of their SLAPP motion, and DC's answering brief in that appeal is due *May 24, 2012—less than a month from today*. The Timeline documents are important to this SLAPP briefing. The threshold inquiry under the SLAPP statute is whether DC's state-law claims are based on protected activity. *See Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002). According to the detailed descriptions in the Timeline, among the Timeline documents are Toberoff's correspondence and agreements with the Siegel and Shuster heirs, as well as a memorandum from an outside law firm advising that Toberoff that his *business* deals with the heirs raise "questions of legality." Docket No. 49, Ex. A at 62-67. These documents will confirm—as the district court rightly held, Docket No. 337—that DC's claims *do not* arise out of Toberoff's protected activities as a lawyer, but are instead based on Toberoff's inducing the heirs to enter into illicit business agreements with him, *see id.*; Docket No. 307 at 13-22.

The second step of the SLAPP analysis considers the probability of success on DC's state-law claims. *See Equilon Enters. v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67 (2002). The Timeline documents directly corroborate DC's claims that Toberoff improperly interfered with DC's agreements and relationships with the heirs—including, for example, the memo from Kevin Marks to the Siegels affirming that they reached a "deal" with DC in 2001 and warning them against repudiating that agreement in favor of Toberoff's business offer. *See* Docket No.

307 at 22-25; Docket No. 334 at 17-25. Moreover, these still-hidden documents will refute defendants' statute-of-limitations and other arguments and demonstrate DC's entitlement to further discovery, which is itself a basis for denying a SLAPP motion. *See Shropshire v. Fred Rappoport Co.*, 294 F. Supp. 2d 1085, 1100 (N.D. Cal. 2003) (deferring SLAPP ruling until summary judgment because "SLAPP motion raises factual questions that cannot be resolved" without discovery); *Lafayette Morehouse, Inc. v. Chronicle Publ'g Co.*, 37 Cal. App. 4th 855, 868 (1995) (court can continue SLAPP hearing so discovery can be completed).

Also on May 24, 2012, DC must file its reply brief in the *Siegel* cross-appeal. A central issue in that appeal—indeed, DC's lead argument on its cross-appeal—is whether the parties reached a binding settlement agreement in 2001 that bars Laura Siegel Larson's claims. Seto Decl. Ex. H-106-118. DC has asked the Ninth Circuit to enter judgment for DC as a matter of law, especially given that recent Circuit authority confirms that a settlement agreement is enforceable where, as here, the parties reached agreement on its material terms—even if the settlement later falls apart during finalization of a long-form agreement. *Id.* Ex. H-106-115 (discussing, *inter alia*, *The Facebook, Inc. v. Pac. Nw. Software, Inc.*, 640 F.3d 1034, 1038 (9th Cir. 2011). At minimum, the new Timeline evidence, including the Marks memo, confirms that there are disputed factual issues that can only be resolved in Larson's favor at trial. *Id.* Ex. H-115-18. In fact, the Marks memo, which is among the Timeline documents, confirms that the Siegels had a "deal" with DC. *Id.* at 18-19, 37; Seto Ex. H-99-100, 118. This memo is key evidence in the *Siegel* appeal, *id.*, and defendants' refusal to produce it is plainly tactical: defendants desperately want to deprive the Courts (especially the Ninth Circuit) of this damaging evidence.

If DC were required to follow the Local Rule 7 motion procedure to lift the Court's current stay, the earliest date such a noticed motion could be heard is June 4, 2012—*well after DC's May 24 appellate briefs are due*. Defendants' efforts to run the clock should be rejected, and the Court's stay order should be lifted.

b. Defendants seek to undermine the urgent need for the Timeline documents by asserting that DC cannot refer to the documents in appellate briefing. Seto Decl. Ex. F-52. This argument is specious, and ignores two fundamental facts. First, DC *also* needs the Timeline documents to take and complete discovery, *see infra* at 9; and, second, both appeals are *interlocutory*, and the Ninth Circuit has far greater latitude and reason to consider such evidence. Indeed, what defendants ignore is that the Ninth Circuit—*and the Ninth Circuit alone*—has complete discretion to determine what evidence it will consider on appeal.[1]

Considering Timeline-related evidence—including the Marks memo and memoranda describing Toberoff's unlawful business dealings—makes a great deal of sense in both appeals, as fairness dictates such long-suppressed evidence be heard. *E.g.*, *Mangini v. U.S.*, 314 F.3d 1158, 1160-61 (9th Cir. 2003) (granting motion to supplement record with three newly discovered letters that refuted material misstatement in opposing party's affidavits below); *Rigsby v. Avenenti*, 1992 WL 144440, at *4 n.1 (9th Cir. June 26, 1992) (granting motion to supplement record with documents "only recently obtained"); *Cootz v. Gen. Tel. Co.*, 1988 WL 131672, at *5 n.5 (9th Cir. Nov. 25, 1988) (granting motion to supplement record with section of collective bargaining agreement that "was not part of the record below" because it was "material to th[e] appeal" and opposing parties "had possession" of the document during the suit).[2]

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[1] *See Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (court has inherent authority to supplement record); *accord See More Light Invs. v. Morgan Stanley DW Inc.*, 415 Fed. Appx. 1, 2 (9th Cir. 2011); *Johnson v. Rancho Santiago Comm'y College Dist.*, 623 F.3d 1011, 1020 n.3 (9th Cir. 2010).

[2] *Colbert v. Potter*, 471 F.3d 158, 165-66 (D.C. Cir. 2006), is equally instructive. There, a receipt was relevant to whether the statute of limitations had run. In the district court, appellee submitted a photocopy of the back side of the receipt, and appellant "challenged the sufficiency and significance of [appellee]'s evidence." *Id*. The D.C. Circuit allowed appellee to supplement the record with a complete copy because, as here, this evidence "*go[es] to the heart of the contested issue, [and] it would be inconsistent with this court's own equitable obligations … to pretend that [it does] not exist.*" *Id*. at 166 (emphasis added).

And, in any event, the Timeline documents are very much a part of the record in both the *Siegel* and *Pacific Pictures* cases. The Court ordered those documents produced on May 25, 2011—*before* defendants filed their notice of appeal in *Siegel* and *five months* before the district court ruled on defendants' SLAPP motion. Docket No. 337; Case No. CV-04-08400 (ODW) (RZ), Docket No. 671.

c. DC will also be prejudiced by the second year-long delay defendants seek to engender because DC has an urgent need to complete discovery in this case and obtain a final judgment. Many parts of discovery, chief among them depositions, ground to a halt after the Court issued its stay order. Often at the urging of the witnesses' counsel, DC has had to defer depositions for key witnesses, including Toberoff, his three companies, his business partner Ari Emanuel, the Siegels' former counsel Kevin Marks, the Timeline author, and many others. DC needs the Timeline documents to conduct examinations of these witnesses, to develop other evidence necessary to pursue its rights (including by seeking summary judgment), and to depose the defendant heirs. Docket No. 364 at 8-10.

Defendants want to grind the case to a halt for as long as they can, on the theory that in October 2013 DC's rights will be compromised, as both the Siegels' and Shusters' termination notices purport to take effect then. This is a bargaining ploy, of course, and DC needs and has the right to proceed to judgment in this case well before 2013. A critical path item in doing so is completing discovery, and discovery cannot really begin or end until DC has the Timeline documents in hand.

Petitioners might wish that the Supreme Court or en banc court will save them. But as *Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 606-07 (2009), made clear, this is not a valid impediment to DC getting the Timeline documents:

> [P]ostjudgment appeals generally suffice to protect the rights of litigants and assure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial….

Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995). It also proposed a reasonable procedure to address any vestigial and legitimate concerns (if any) that defendants might have concerning confidentiality.

If the Court requires hearing on this matter, DC requests that the hearing occur on April 30, 2012, at 10 a.m. PDT.

Dated: April 25, 2012

Respectfully Submitted,

O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli
Attorneys for Plaintiff DC Comics

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EXHIBIT B

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DC COMICS,

Plaintiff,

v.

PACIFIC PICTURES CORPORATION, IP WORLDWIDE, LLC, IPW, LLC, MARC TOBEROFF, an individual, MARK WARREN PEARY, as personal representative of the ESTATE OF JOSEPH SHUSTER, JEAN ADELE PEAVY, an individual, LAURA SIEGEL LARSON, an individual and as personal representative of the ESTATE OF JOANNE SIEGEL, and DOES 1-10, inclusive,

Defendants.

Case No. CV 10-3633 ODW (RZx)

DISCOVERY MATTER

DC COMICS' NOTICE OF MOTION AND MOTION TO COMPEL PRODUCTION OF DOCUMENTS

DECLARATIONS OF MATTHEW T. KLINE AND CASSANDRA SETO, AND [PROPOSED] ORDER FILED CONCURRENTLY HEREWITH

Judge: Hon. Otis D. Wright II
Magistrate: Hon. Ralph Zarefsky

Hearing Date: Feb. 13, 2012
Hearing Time: 10:00 a.m.
Courtroom: 540
Discovery Cutoff: None Set
Pretrial Conference: None Set
Trial: None Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 13, 2012, at 10:00 a.m., or as soon thereafter as the matter may be heard by the above-entitled court, located at 255 East Temple Street, Los Angeles, California in Courtroom 540, plaintiff DC Comics will and hereby does move the Court for an order compelling defendants (1) to produce to DC an unredacted copy of the communication from Kevin Marks (the "Marks Communication) identified in defendant Laura Siegel Larson's July 11, 2003, letter to her half brother Michael, Seto Decl. Ex. C at 287, and the Toberoff Timeline document, Docket No. 49, FAC Ex. A at 63; or (2) to provide the Court, for its *in camera* review, the Marks Communication.

This motion is made pursuant to Rules 26, 34, and 37 of the Federal Rules of Civil Procedure and Rule 37-2 of the Local Rules of this Court on the grounds that defendants have no proper grounds to resist producing the Marks Communication. Any asserted privilege in the document was waived when defendants disclosed its contents in, *inter alia*, Larson's July 2003 letter. Significant portions of the Marks Communication, moreover, are not privileged, but rather merely recount and convey business communications. The Marks Communication is directly relevant to DC's federal and state-law claims in this case and significantly undermines the credibility of at least three key witnesses: Marks, Larson, and Marc Toberoff.

Pursuant to Local Rule 37-1, the parties have attempted unsuccessfully to resolve their disputes and therefore respectfully seek the assistance of the Court. Pursuant to Central District Local Rule 37-2.4, and as explained the Declaration of Matthew T. Kline filed concurrently herewith, DC is forced to submit this as a motion rather than a joint stipulation because defendants have improperly refused to provide their opposition in s timeline manner in accordance with Local Rule 37-2.2.

This motion is based on this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the concurrently-filed Declarations of Matthew T. Kline and Cassandra Seto and exhibits in support

thereof; any additional briefing that may be filed; all exhibits, files, and records on file in this action; matters of which judicial notice may be taken; and such additional submissions and argument as may be presented at or before the hearing on this motion.

Dated: January 23, 2012

Respectfully Submitted,
O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli
Attorneys for Plaintiff DC Comics

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OTHER AUTHORITIES

I. INTRODUCTION

DC brings this motion to obtain a single communication from Kevin Marks to the Siegel heirs—a communication whose existence and substance is openly disclosed in both defendant Laura Siegel Larson's July 11, 2003, non-privileged letter to her half-brother Michael, as well as the non-privileged Toberoff Timeline. DC's complaint alleges that in October 2001, DC reached an agreement with the Siegels finally settling the Siegels' copyright claims. Marks negotiated the contract on behalf of the Siegels, and he told DC in October 2001 the Siegels "accepted" DC's then-pending offer. Toberoff, who was well aware of this agreement from conversations with Marks, falsely represented to the Siegels, through Marks, that a wealthy investor was prepared immediately to pay the Siegels $15 million for their putative Superman rights, plus other consideration. Based on Toberoff's false promises, the Siegels in 2002 repudiated their 2001 agreement with DC and entered into a series of agreements with Toberoff and defendant IP Worldwide, LLC, which gave Toberoff and his company a 45% interest in the Siegels' putative rights.

Larson's July 2003 letter, which Judge Wright recently ordered defendants to produce, confirms that Marks communicated Toberoff's offer to the Siegels, and that when he did so, he told them they could not accept it because they "had a deal with Time Warner/DC." Marks said further that, if the Siegels repudiated their deal with DC to accept Toberoff's offer, Marks "would testify against [the Siegels] in court." Larson's July 2003 letter openly admits Marks said this, and Larson's admission—*which defendants fought for years to keep hidden from DC*—validates DC's claims in this case, impeaches key testimony from Larson, Marks, and Toberoff, and contradicts defendants' contention in this case and *Siegel* that the Siegels and DC did not reach a binding settlement in October 2001.

DC was entitled to Larson's July 2003 letter to her brother, and is now entitled to the underlying Marks communication that both the July 2003 letter and the Toberoff Timeline openly disclose. Larson's disclosure of Marks' message in

her non-privileged July 2003 letter waived any claim of privilege defendants could assert in Marks' communication. Judge Wright ordered defendants to produce the July 2003 letter over defendants' specious objections that the July 2003 letter was privileged, and over defendants' claims that prior rulings in this case and *Siegel* barred DC from discovering the document.

The Toberoff Timeline—which Judge Larson ordered defendants to produce, and defendants jointly and publicly filed in *Siegel* in March 2009, Docket No. 42 at 40-54—similarly discusses Toberoff approaching Marks to acquire the Siegels' interests; Marks' conveying Toberoff's offer to the Siegels; and Marks "tell[ing] the Siegels that he would testify in court against the Siegels if they accepted this offer…." This disclosure of Marks' communications—which defendants previously asserted the Toberoff Timeline invented and did not exist—also vitiated any claims of privilege in the Marks' communication.

In any event, it is clear that at least significant parts of the Marks communication were not privileged, because the document merely conveyed Toberoff's offer to the Siegels, Marks' responsive comments to Toberoff, and his affirmation that DC and the Siegels had reached an agreement in 2001. As courts in this circuit and elsewhere have held, attorney-client privilege does not extend to the transmission of such business proposals from one party to another, or to a recitation of such underlying, operative facts.

Parts of the Marks communication not disclosed in the July 2003 letter or the Toberoff Timeline might be privileged, but defendants have neither explained nor showed why that is the case, or redacted the document to eliminate subject matters other than those disclosed in the July 2003 letter and the Timeline. Indeed, DC does not know whether the Marks communication is lengthy or brief, or whether there is a basis to redact any of its contents. What DC *does* know is that the communication contains Marks' message conveying Toberoff's offer to the Siegels and his objections to it. DC is entitled to discover Marks' communication on these

subjects in his own words—both as proof of its claims and to impeach his, Larson's, and Toberoff's contrary testimony. In short, defendants should be ordered to produce the Marks communication without delay. Alternatively, the Court should order defendants to provide the document for *in camera* review, to produce the document to DC, with redactions if necessary.

II. RELEVANT FACTUAL BACKGROUND

1. The Marks Communication At Issue And Its Relevance

Defendant Laura Siegel Larson sent her half-brother Michael Siegel a letter dated July 11, 2003, in which she openly disclosed the existence and substance of a communication she received from Kevin Marks—the Siegels' prior lawyer who negotiated with DC a settlement of the heirs' putative Superman claims in October 2001. Cassandra Seto Decl. ("Seto Decl.") Ex. C at 287. According to Larson, Marks communicated to the Siegels in 2002: an offer made by defendant Marc Toberoff on behalf of an unnamed "investor" to acquire the Siegels' putative Superman rights; that the heirs could not accept the offer because they "had a deal with Time Warner/DC" providing that DC would retain all rights to Superman; and that Marks "would testify against [the Siegels] in court" if they repudiated the October 2001 agreement with DC to accept Toberoff's offer. *Id*.

The Marks Communication validates DC's federal and state-law claims here. As alleged in DC's complaint, DC and the Siegels engaged in negotiations for four years after the Siegels served their Superman termination notice in 1997, resulting in an agreement in October 2001 finally settling the Siegels putative claims. Docket No. 49, First Amended Complaint ("FAC") ¶¶ 66-69. Indeed, Marks sent John Schulman, general counsel for Warner Bros., a letter on October 19, 2011, confirming the parties' agreement: "The Siegel Family (through Joanne Siegel and Laura Siegel Larson, the majority owners of the terminated copyright interests) has accepted D.C. Comics' offer of October 16, 2011 in respect of the 'Superman' and 'Spectre' properties." Docket No. 305-15 at 414.

After securing half of the Shuster heirs' putative Superman copyright interests for himself, Toberoff reached out to Marks in late 2001, early 2002, and again in the summer of 2002. Docket No. 49, FAC ¶¶ 66-79. As Marks has testified, he told Toberoff of the existence of the 2001 agreement between the Siegels and DC, refused to discuss its specifics, but Toberoff pressed for details concerning the agreement and asked Marks to communicate to the Siegels an offer to buy out their rights. Docket Nos. 49, FAC ¶ 77; 307 at 9-13; 308 ¶¶ 16-31.

Toberoff falsely represented to the Siegels (through Marks) that if they repudiated their agreement with DC and entered into an agreement with him instead, a wealthy "investor" was prepared immediately to pay them $15 million for their Superman rights, plus generous back-end profit participations and other consideration. Toberoff also falsely represented that he and his business partner would help the Siegels produce their own Superman movie. Docket Nos. 49, FAC ¶¶ 71-78 & Ex. A at 63; 225-4 at 3; 305-14 at 375:20-376:5; 308 ¶¶ 29-31. Based on Toberoff's false inducements, the Siegels repudiated their 2001 agreement with DC and entered into agreements with Toberoff and defendant IP Worldwide, LLC, which provided Toberoff and his company a 45% interest in any recovery by the Siegels. Docket Nos. 49, FAC ¶¶ 79-85, 180-86; 305-26; 305-56 308 ¶¶ 32-41.

2. Larson's July 2003 Letter And Its Revelations Concerning Marks

From the outset of discovery in this case, DC pressed defendants to produce correspondence between Larson and her brother Michael identified in the Toberoff Timeline—*none* of which had been provided to DC in the *Siegel* case or appeared on defendants' numerous privilege logs. *E.g.*, Docket No. 160 at 30-38. This includes a May 2003 letter from Michael to Larson and Larson's July response. Docket Nos. 49, FAC Ex. A at 64-66; 160 at 37-38. Defendants refused to produce these non-privileged communications between brother and sister, forcing DC to file motion after motion seeking these unaccounted for Larson-Michael Siegel correspondence. *E.g.*, Docket Nos. 160 at 30-38; 225 at 13-17; 316 at 6-20.

This Court ordered defendants to produce to DC a May 13, 2003, letter from Michael to Larson. Docket No. 209 at 12. The May 13 letter directly refutes factual contentions in SLAPP briefing, corroborates DC's claims in the case, and confirms the veracity of parts of the Toberoff Timeline document. *See* Docket No. 225 at 13-14.[1] DC examined Larson about Michael's May 13 letter during her deposition. She confirmed that she responded to his May 13 letter; that she believed her response was sent in July 2003; and that she gave Toberoff a copy of the final letter. Docket No. 316-5 at 314:12-15, 316:11-12, 323:11-14, 325:22-327:22, 328:3-330:3. Toberoff refused to produce the letter or confirm it existed for months—then he finally disclosed its existence on defendants' privilege logs (where it was hidden behind other entries) and claimed it was subject to a common-interest privilege. Docket Nos. 329, 331, 332.

Judge Wright ultimately ordered defendants to produce the July 2003 letter to DC, rejecting as clearly erroneous defendants' arguments that, *inter alia*, the July 2003 letter was protected by a common-interest privilege, or that prior discovery rulings in this case or *Siegel* barred DC from seeking it. Docket No. 336.

Like the May 2003 letter, the July 2003 letter contains especially important revelations—both because of the facts it recounts, and because it underpins many of DC's key allegations in this case. *Compare* Seto Decl. Ex. C at 287-90, *with* Docket No. 49, FAC ¶¶ 7-8, 66-85, 180-86. Significantly, Larson openly discloses receiving a communication from Marks in which he conveyed Toberoff's offer to Siegels, while at the same time stating that he would testify against the heirs if they

[1] The opening line of the May 13 letter also disclosed yet another Larson-Michael correspondence defendants never logged, produced, or disclosed—a November 2, 2002, letter from Larson to Michael. Docket No. 225-4 at 3. Defendants represented to this Court that they were not in possession of the November 2 letter, Docket Nos. 267-1 at 25-26; 288 at 38:22-39:13, and based on that representation, the Court denied DC's motion to compel its production, Docket No. 288 at 43:23-44:2. Defendants now *admit* the November 2 letter is in their possession, yet they still refuse to produce it. Seto Decl. Ex. F at 311 (Entry No. 399). DC will be moving separately to compel its production.

accepted his offer. Larson wrote to her brother (in a letter she admits Toberoff reviewed, edited, and approved):

> We fired Kevin Marks and Bruce Ramer because they were insisting we take a bad TW/DC deal. You'll remember that you, Don Bulson and we were shocked when *Kevin Marks said that if asked to, he would testify against us in court*. …
>
> *Kevin Marks had turned Marc away saying we had a deal with DC* when we did not. …
>
> *Kevin Marks told Marc we had a deal with Time Warner/DC*.

Seto Decl. Ex. C at 287 (emphasis added).

The Marks Communication not only directly supports DC's claims in this case, it bears importantly on Larson's, Marks', and Toberoff's credibility as witnesses. For example—before DC obtained the Timeline document or any of the evidence above—Marks equivocated in the *Siegel* case:

> Q. Did you as of February 6, '02 believe that you had closed a deal with DC for the Superman interest?
>
> A. Well, if the question is did I think at this point there was a final, binding, enforceable agreement, the answer would be no, but I did believe that we had come to an agreement back on October 19th, 2001, that was reflected exactly in the terms that I set out. At the end of that letter I wrote to John in substance and effect, "John, if I've gotten anything wrong, if I've misstated any of these terms, please let me know." When John writes back on October 26, which I see later, in effect his letter is, "Yeah, you've got terms wrong. My outline of the deal terms is different than your outline of the deal terms." So while I thought we had an agreement on these terms, John evidently didn't, and where you don't have a meeting of the minds, you don't have an agreement.

Docket No. 305-14 at 360:21-362:2.

Larson made similar claims, *see* Seto Decl. Ex. B at 130-155:24; 224:21-225:5; 266:10-270:3 ("We never reached a final agreement."), and Toberoff testified that Marks did *not* tell Toberoff the Siegels already had a deal with DC. *Compare, e.g.*, Docket Nos. 305-17 at 517:13-532:20 (Toberoff: "[Marks'] indicated that the *Siegel rights were available*, and if there was an interest in those rights, you can make an offer, but he can't discuss anything with me.") (emphasis

added), *with* Seto Decl. Ex. C at 287 (Larson, in 2003 Letter edited and approved by Toberoff: "Kevin Marks told Marc we had a deal with Time Warner/DC.").[2]

Larson's July 2003 letter also confirms, once again, the accuracy of the Toberoff Timeline. Defendants have claimed the Timeline is an "untrustworthy," "ranting" "hitpiece" and chastised DC and its counsel for relying on it. *E.g.*, Docket Nos. 160 at 5, 71-73; 162-10 at 581-82 ¶ 10; 196 at 2, 10; 230 at 9-10. Yet, discovery revelation after discovery revelation—all made under force of court order—has verified the Timeline is in fact a truthful recitation of defendants' admissions and conduct, and that it identifies documents defendants improperly buried and withheld. *E.g.*, Docket Nos. 209 at 12; 230 at 9-10; 336. The Timeline, like the July 2003 letter, discloses the Marks communication and recounts:

> MT and Ari Emanuel, partner and agent at Endeavor, contacts Kevin Marks at Gang, Tyrer [sic], Ramer, & Brown again, (who represented Joanne and Laura Siegel), on August 8, 2002. MT approaches the Siegels, *not as an attorney but as a film producer*, stating that he is "allied" with Emanuel, hoping such a claim will legitimize him.
>
> On August 8, 2002, MT tells Marks that he and Emanuel have a billionaire ready to offer $15 million up-front, plus what they promise to be meaningful participation from proceeds for exploitation of the Siegels' rights to SUPERMAN and some continued royalties on an ongoing basis in all media. Kevin Marks says to the Siegels, 'Don't do it." …
>
> *In their very first conversation, Kevin Marks tells MT "no go" --- that the Siegels have already reached an agreement with Time Warner and DC Comics.*
>
> *Marks conveys MT's offer to the Siegels, and Marks does say to the Siegels, it is a better offer than the one you have. However, Marks also tells the Siegels that he would testify in court against the Siegels if they accepted this offer because he believes there has already been an agreement reached [with DC].*
>
> The Siegels are angry at Kevin Marks that he said he would testify against them if they took MT's offer, and relations break down between the Siegels and Gang, Tyrer [sic]. They fire Gang, Tyrer.

[2] The Court in *Siegel*, which did not have the benefit of this new evidence, denied DC's settlement defense based, *inter alia*, on Marks', Larson's, and Toberoff's deposition testimony. Case No. CV-04-8400, Docket No. 293 at 57-62. DC will be presenting this new evidence in *Siegel*, as one of many grounds to overturn Judge Larson's ruling.

Docket No. 49, FAC Ex. A at 63 (emphasis added).

Hoping to avoid motion practice, DC asked defendants to produce the Marks communication identified in the July 2003 letter and Timeline. Defendants refused. Seto Decl. Exs. D, E.[3] They also refuse to describe the communication beyond what is disclosed in the July 2003 letter and Timeline, nor will they confirm where it is listed on their various privilege logs. DC believes, but cannot know for certain, that it is at Entry No. 623 of the Siegel Privilege Log—an August 9, 2002, "Letter" from "Kevin Marks" to "Joanne, Laura Siegel, Atty Don Bulson, Atty Bruce Ramer," which was withheld on "Atty/Client" grounds, Docket No. 162-6 at 422.

III. DEFENDANTS SHOULD BE COMPELLED TO PRODUCE MARKS COMMUNICATION IDENTIFIED IN LARSON'S JULY 2003 LETTER

1. Larson's July 2003 Letter Waived Privilege in the Marks Communication. Larson's disclosure of the substance of the Marks communication in her July 2003 letter waived whatever privilege might otherwise have existed in the document. *See Tennenbaum v. Deloitte & Touche*, 77 F.3d 337, 341 (9th Cir. 1996) ("disclosure of privileged communications to someone outside the attorney-client relationship" waives privilege); *Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d 18, 25 (9th Cir. 1981) (waiver applies to all "communications about the matter actually disclosed"); *U.S. v. Jacobs*, 117 F.3d 82, 91 (2d Cir. 1991) ("[d]isclosure of the

[3] Defendants do not dispute that the Marks communication is responsive to DC's requests for production served in *Siegel* and this case or relevant. *E.g.*, Docket Nos. 161-14 at 154-55 (Larson Request No. 15 ("All DOCUMENTS relating to the October 19, 200[1] letter from Kevin Marks to John Schulman confirming that the SIEGEL HEIRS 'accepted D.C. Comics' offer of October 16, 2001."); *Id.* No. 23 ("All DOCUMENTS relating to any solicitation, offer, or option from any DEFENDANT regarding the purported rights YOU or the SIEGEL HEIRS [have] in SUPERMAN and/or SUPERBOY.")); 296-3 at 17 (Siegel Heirs Request No. 52 in *Siegel* ("All Writings concerning the settlement discussions between Plaintiffs and Defendants that took place from approximately April 17, 1997 through September 30, 2002."); *Id.* No. 59 ("All Writings concerning any disposition of any rights relating to Superman, including but not limited to any solicitation, offer, option, agreement or license.")).

substance of a privileged communication" effects waiver); *In re Qwest Commc'ns Int'l Inc.*, 450 F.3d 1179, 1185 (10th Cir. 2006) ("voluntary disclosure by the client is inconsistent with the attorney-client relationship and waives the privilege").

The law in this circuit is well-established that voluntary disclosure of the substance of a claimed attorney-client communication waives privilege as to that communication. For example, in *Electro Scientific Indus., Inc. v. Gen. Scanning, Inc.*, 175 F.R.D. 539, 543 (N.D. Cal. 1997), the court found that a news release stating that counsel advised that the subject patents were invalid waived privilege as to underlying legal opinions. The court reasoned that the news release "voluntarily disclosed an important, substantive component of a *communication* from counsel"; indeed, the news release disclosed "the most important part of it: the bottom line of the lawyer's opinion, his conclusion, the ultimate outcome of his legal reasoning," *Id.* (emphasis in original). Larson similarly discloses in her July 2003 letter the "most important parts" of Marks' communication: that Marks believed the Siegels "had a deal with Time Warner/DC" finally settling their putative Superman claims in October 2001; that Marks "turned Marc [Toberoff] away saying [the Siegels] had a deal with DC"; and that Marks made clear to the Siegels he "would testify against them in court" if they repudiated the October 2001 agreement to accept Toberoff's offer on behalf of the unnamed "investor." Seto Decl. Ex. C at 287.[4]

Defendants cannot avoid this waiver by having improperly withheld the July 2003 letter from DC for over six years based on specious common-interest privilege claims now rejected by Judge Wright. The July 2003 letter was written by Larson in response to Michael's May 13 letter concerning Toberoff's misconduct—and his illicit efforts to secure Michael's rights. Docket No. 225-4; 316-5 at 314:12-15,

[4] *Accord Weil*, 647 F.2d at 25 (disclosure to opposing counsel of content of privileged communication waived privilege) *U.S. v. Mendelsohn*, 896 F.2d 1183, 1189 (9th Cir. 1990) (waiver found where statements concerning advice of counsel made to third party); *U.S. v. Reyes*, 239 F.R.D. 591, 602-603 (N.D. Cal. 2006) (disclosure of substance of legal investigative reports to government waived privilege as to underlying documents).

316:11-12, 323:11-14, 325:22-327:22, 328:3-330:3. Larson drafted and sent her July 2003 letter to address these accusations of misconduct, Docket Nos. 329 at 3; 332 at 7—and she did so *after* September 2002, and at a time when the Ohio district court held (and Judge Wright confirmed) Michael's and Larson's interests were *not* in common, but were "separate and apart." Docket Nos. 161-5 at 31; 336. When Michael received the July 2003 letter—which contains *no* privilege or confidentiality markings—he had no duty to keep the July 2003 letter or its discussions of the Marks' communication private, meaning the July 2003 letter "surrenders the privilege with respect to the world at large; selective disclosure is not an option." *Burden-Meeks v. Welch*, 319 F.3d 897, 898 (7th Cir. 2003); *accord supra* n.4 & accompanying text; *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F.3d 1122, 1126-27 (7th Cir. 1997); *Permian v. U.S.*, 665 F.2d 1214, 1219-22 (D.C. Cir. 1981); *Westinghouse Elec. Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1423-27 (3d Cir. 1991).

Defendants assert that no waiver occurred because in 2001 and part of 2002 Michael and Larson shared a common-interest, and all Larson was doing in her 2003 letter was discussing a 2002 communication—Marks' message—that once was confidential. Seto Decl. Ex. E at 293. Whether Michael previously shared a common interest with Larson makes no difference. In July 2003, Michael stood in the same shoes as any other third-party recipient of Larson's letter. He was not within the umbrella of any privilege and could disclose its contents to anyone. Larson could have no expectation (reasonable or otherwise) of confidentiality in her letter or its contents, *see U.S. v. Martin*, 278 F.3d 988, 1000 (9th Cir. 2002), and she thereby waived any privilege in the contents of the letter, including her detailed description of the Marks communication and the underlying Marks document that communicated it, *U.S. v. Ruehle*, 583 F.3d 600, 612 (9th Cir.2009) ("*any* voluntary disclosure of information to a third party waives the attorney-client privilege"); *Weil*, 647 F.2d at 24. Parties who share the common-interest privilege expressly

agree not to disclose such communications, *e.g.*, *In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 364-65 (3d Cir. 2007), but as the Ohio court and Judge Wright both confirmed, Michael was under no such duty in July 2003.

Indeed, at the time Larson sent her July 2003 letter, her and Michael's interests were palpably at odds. Larson agreed Toberoff should try to buy, in partnership with Ari Emanuel, her sick brother Michael's putative interests in Superman. Seto Decl. Ex. A at 3-5. Larson, by her own admission, worked with Toberoff to convince Michael to accept Toberoff's offer on behalf on his "unnamed investor," *id.* Ex. C at 288-90, even though the terms Toberoff was offering Michael were worse than he and Larson were themselves demanding from DC, *see* Docket No. 183-4 at 47. Toberoff also withheld key information from Michael and his lawyer, Don Bulson. Bulson recently confirmed that in negotiating with Toberoff he asked for transparency, *e.g.*, Docket No. 305-52 at 1877:21-1878:3, and despite repeated requests that Toberoff identify the unnamed "investor" on whose behalf he was purportedly acting, Toberoff refused to tell him it was Emanuel. *E.g.*, *id.* at 1863:5-11. Toberoff likewise refused to disclose his own *personal business interests* in the transaction, including that Emanuel was his business partner. *E.g.*, *id.* at 1863:18-1867:2.

Defendants suggest DC is precluded from discovering the Marks document based on rulings by the Ohio court in the *Siegel* case, Seto Decl. Ex. E at 293, but *no court*—not this Court, not the Court in *Siegel*, and not the Ohio court—has ever adjudicated whether Larson's disclosure in her July 2003 letter waived privilege in the Marks communication. No court could have so ruled since defendants first produced the July 2003 letter in *October 2011*, pursuant to Judge Wright's order, and after having obscured it for years behind a false privilege log entry listing a "Facsimile" from "Laura Siegel" to "Marc Toberoff." Docket No. 329 at 1.

2. Defendants' Disclosure of the Toberoff Timeline Also Waived Privilege in the Marks Communication. The Timeline, like Larson's July 2003 letter, openly

discloses Marks' communications with the Siegels' concerning Toberoff's illicit offer. *See supra* at 7-8. Such disclosures vitiate any claims of privilege in the document. *E.g.*, *Weil*, 647 F.2d at 24 (waiver applies to all "communications about the matter actually disclosed"); *Jacobs*, 117 F.3d at 91 ("[d]isclosure of the substance of a privileged communication" effects waiver).

Defendants repeatedly waived all privilege claims over the Timeline, as Judge Larson squarely held. *E.g.*, Docket No. 42 at 45-47. And when DC finally obtained the document in December 2008, defendants took no steps to maintain its confidentiality. Just the opposite: *defendants* chose openly and publicly to file the Timeline on March 2, 2009, as part of a discovery joint stipulation in the *Siegel* case. *See* Docket No. 42 at 43-44. As quoted and shown above, the Timeline contains lengthy descriptions of the Marks communication, and defendants never sought to redact those descriptions or quotations—rather, instead, they called them a delusional and false rant. *E.g.*, Docket Nos. 160 at 5, 71-73; 162-10 at 581-82 ¶ 10; 196 at 2, 10; 230 at 9-10. But Larson's very own July 2003 letter (which Toberoff scripted) shows that the Timeline's disclosures were not a wild rant, and confirm that Marks, in fact, told Toberoff and the Siegels exactly what the Timeline author reported. By failing to assert privilege over the Timeline in 2007 or 2008, and by failing to protect or redact its contents from full public review in 2009, defendants waived any privilege claim over the Marks communication.

3. <u>In Any Event, The Marks Communication Is Not Privileged (And Least Not In Its Entirety)</u>. Larson's July 2003 letter and the Timeline both describe the Marks communication as (a) Marks' republishing Toberoff's offer to acquire the Siegels' purported Superman rights; (b) Marks' republishing his disclosure to Toberoff that the Siegels reached agreement with DC; and (c) Marks' recounting the fact the Siegels reached a settlement agreement with DC in 2001. It is well-established that the attorney-client privilege does not extend to the transmission of facts such as this, as opposed to the conveyance of legal advice. *E.g.*, *Upjohn Co.*

v. U.S., 449 U.S. 383, 395-396 (1981) (protection of attorney-client privilege does not extend to "facts"). Facts do not become privileged simply because they are incorporated into a communication from counsel. *Id.* at 396; *see* 6-26 MOORE'S FEDERAL PRACTICE - CIVIL § 26.49 (2011) ("The underlying facts of an action are not protected by the attorney-client privilege.").

In *Mckay v. Comm'r*, 886 F.2d 1237, 1238 (9th Cir. 1989), the Ninth Circuit permitted an attorney to testify, over an attorney-client privilege objection, that he conveyed a notice of deficiencies from the IRS to his client. The "relaying of this message is not in the nature of a confidential communication." *Id.* The privilege does not extend to the Marks communication for the same reason: Marks was merely conveying the terms of Toberoff's offer to the Siegels, his response, and the fact of their October 2001 agreement with DC. Marks "served merely as a conduit for transmission of a message," *U.S. v. Freeman*, 519 F.2d 67, 68 (9th Cir. 1975) (quoting *U.S. v. Hall*, 346 F.2d 875, 882 (2d Cir. 1965)).

Likewise, in *In re Fischel*, 557 F.2d 209, 212 (9th Cir. 1977), the Ninth Circuit ordered an attorney to produce lawyer-created documents that summarized business transactions with third parties. The facts incorporated into the summary documents did not become privileged because an attorney gathered them. The "purpose of the [attorney-client] privilege," the court held, "is not to permit an attorney to conduct his client's business affairs in secret," and that an "attorney's involvement in, or recommendation of, a transaction does not place a cloak of secrecy around all incidents of the transaction." *Id.* at 211-12. Marks' words and actions as "attorney-messenger" similarly do not cloak the facts conveyed.

4. <u>The Order DC Seeks.</u> Defendants should be ordered to produce the Marks communication to DC without redaction. Defendants refuse to describe the document beyond what is disclosed in Larson's July 2003 letter and the Timeline, so DC has no way of determining whether it includes any privileged material beyond the non-privileged contents discussed above. DC believes the Marks

communication is identified as Entry No. 623 of the Siegel Privilege Log in this case, Docket No. 162-6 at 422, but as noted above, defendants refuse to confirm that. To the extent the document incorporates legal advice, defendants had a duty to produce a redacted copy of the document, excluding any claimed privileged material. *See* FED R. CIV. P. 34(b)(2)(C). Defendants did not and therefore waived any privilege claims. *See Weil*, 647 F.2d at 24 (voluntary disclosure of claimed privileged material to a third party constitutes waiver); MOORE'S FEDERAL DISCOVERY PRACTICE § 3.17 (2011) (produced documents to be redacted to preserve privilege claims).

In the alternative to ordering the document produced outright, the Court could order defendants to submit it for *in camera* review, to determine whether any additional contents in the document other than those described above exist and should be redacted. *See In re Grand Jury Investigation*, 974 F.2d 1068, 1074 (9th Cir. 1992); *Applied Med. Res. Corp. v. Ethicon, Inc.*, 2005 U.S. Dist. LEXIS 41199, at *4 (C.D. Cal. May 23, 2005). At all events, DC should be provided without delay the portions of the Marks memo disclosed in the July 2003 letter and Timeline.

IV. CONCLUSION

For the foregoing reasons, DC's motion should be granted.

Dated: January 23, 2012

Respectfully Submitted,
O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli
Attorneys for Plaintiff DC Comics

EXHIBIT C

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Attorneys for Plaintiff DC Comics

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DC COMICS,

Plaintiff,

v.

PACIFIC PICTURES CORPORATION, IP WORLDWIDE, LLC, IPW, LLC, MARC TOBEROFF, an individual, MARK WARREN PEARY, as personal representative of the ESTATE OF JOSEPH SHUSTER, JEAN ADELE PEAVY, an individual, LAURA SIEGEL LARSON, an individual and as personal representative of the ESTATE OF JOANNE SIEGEL, and DOES 1-10, inclusive,

Defendants.

Case No. CV 10-3633 ODW (RZx)

DISCOVERY MATTER

DC COMICS' REPLY IN SUPPORT OF *EX PARTE* APPLICATION TO LIFT TEMPORARY STAY ON COURT'S MAY 25, 2011, AND AUGUST 8, 2011, ORDERS

Judge: Hon. Otis D. Wright II
Magistrate: Hon. Ralph Zarefsky

Hearing Date: May 7, 2012
Hearing Time: 10:00 a.m.

5. The exigency and need for the documents at issue here is real. As Ninth Circuit law makes clear, it is for the Ninth Circuit—*and the Ninth Circuit alone*—to decide whether it will consider the Timeline documents as part of defendants' SLAPP and *Siegel* appeals. *Ex Parte* App. at 8-9. Defendants do not and cannot dispute this, suggesting only instead that the court of appeals would consider these documents in an *extraordinary* case. Opp. at 3-5. This is an extraordinary case, just like the ones DC cited, *Ex Parte* App. at 8 & n.1, because defendants have long possessed and refused to produce the underlying Timeline documents at issue, and no one can dispute whether documents like the Marks memo or memos confirming that Toberoff's business practices were "unlawful" are relevant.

As Chief Judge Kozinski explained in the *Lowry* case cited by DC and defendants, the Ninth Circuit has the "inherent authority to supplement the record in extraordinary cases," but is loathe to do so where the "authenticity" of documents is disputed. 329 F.3d at 1024-25. Here, there is no dispute about authenticity, nor could there be one, given that the documents at issue admittedly came from Toberoff's files and Toberoff reviewed the documents and logged them as allegedly real, privileged communications between client and counsel.

Defendants cannot decide for the Ninth Circuit what documents the court will consider on appeal. And given the admitted authenticity of these documents, the already interlocutory nature of defendants' SLAPP and *Siegel* appeals, and DC's arguments in both appeals about the relevance of this newly emerging evidence as direct refutations to defendants' factual arguments, the Ninth Circuit would be well within its rights to consider all or, at least some, of the Timeline documents in either appeal. At least one that it certainly can and should consider is the Marks memo, which is described in detail in the district court and appellate record in the *Siegel* and *Pacific Pictures* cases, and fully supports DC's position in both appeals. *E.g.*, Case No. CV-04-8400, Docket Nos. 476 at 11-22; 476-2 at ¶¶ 4-5; *see* Decl. of Ashley K. Pearson ("Pearson Decl.") Ex. A at 8-12.

to wait another month, some months, or possibly even a year to obtain these materials. The one-year stay that has already occurred fully served its intended purpose.

Dated: May 2, 2012

Respectfully Submitted,
O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli
Attorneys for Plaintiff DC Comics

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EXHIBIT D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 10-03633 ODW (RZx)**	Date	**May 10, 2012**
Title	**DC COMICS v. PACIFIC PICTURES CORPORATION, ET AL.**		

Present: The Honorable	**RALPH ZAREFSKY, U.S. MAGISTRATE JUDGE**

Ilene Bernal	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: In Chambers –
DEFENDANTS' EX PARTE APPLICATION FOR A PROTECTIVE ORDER REGARDING THE PRODUCTION OF THE "STOLEN DOCUMENTS"
Filed May 9, 2012 - Doc 420

Defendants may designate as confidential any document to be produced that contains sensitive medical information. Any such document shall be used only in accordance with the custom of the parties as they have handled other documents designated as confidential. The designation shall expire within 30 days unless Defendants move, by noticed motion under L.R. 37, for a protective order as to that specific document; if Defendants so move, the designation will continue until the Court rules.

If any documents contain personal identifiers such as Social Security numbers, Plaintiff shall maintain the personal identifiers in confidence.

Except as set forth, Defendants' Ex Parte Application is denied.

_____ : _____

Initials of Preparer igb

EXHIBIT D
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