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 9 Joanne Siegel and Laura Siegel Larson

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

12 JOANNE SIEGEL, an individual; and
 13 LAURA SIEGEL LARSON, an
 14 individual,

15 Plaintiffs,

16 vs.

17 WARNER BROS.
 18 ENTERTAINMENT INC., a
 19 corporation; TIME WARNER INC., a
 20 corporation; DC COMICS, a general
 21 partnership; and DOES 1-10,

22 Defendants

23 DC COMICS,

24 Counterclaimant

25 vs.

26 JOANNE SIEGEL, an individual; and
 27 LAURA SIEGEL LARSON, an
 28 individual,

Counterclaim Defendants.

Case Nos. CV 04-8400 SGL (RZx)
 CV 04-8776 SGL (RZx)

[Consolidated for Discovery Only]
 Honorable Stephen G. Larson, U.S.D.J.

**DECLARATION OF MARC
 TOBEROFF IN OPPOSITION TO
 DEFENDANTS' *EX PARTE*
 APPLICATION TO SET
 REBUTTAL EXPERT REPORT
 DATE FOR JANUARY 14, 2008**

DECLARATION OF MARC TOBEROFF

I, Marc Toberoff, declare as follows:

1. I am an attorney at the Law Offices of Marc Toberoff, PLC, counsel of record for plaintiffs Laura Siegel Larson and Joanne Siegel. I am a member in good standing of the State Bar of California and submit this declaration in opposition to Defendants' *Ex Parte* Application to Set Rebuttal Expert Date for January 14, 2008. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On May 13, 2005, Plaintiffs served Plaintiffs' Request for Production of Documents and Things to Defendant Warner Bros. Entertainment, Inc., Set One, relating to Plaintiffs' claims and damages. On May 15, 2005, Plaintiffs served Plaintiffs' Request for Production of Documents and Things to Defendant DC Comics, Set One, relating to Plaintiffs' claims and damages. Plaintiffs thereafter served Plaintiffs' Second Set of Requests for Production of Documents and Things to Defendant DC Comics on October 17, 2006 and Plaintiffs' Fourth Set of Requests for Production of Documents and Things to Defendants Warner Bros. Entertainment Inc., Warner Bros. Television Inc., Time Warner Inc. and DC Comics on October 18, 2006.

3. Attached hereto as Exhibit A is a true and correct copy of a Stipulation and Order re: Expert Discovery Schedule, entered by the Court on November 17, 2006.

4. On January 12, 2007, Plaintiffs' financial expert Steven Sills ("Sills") timely submitted to Defendants a 14 page expert report (including appendices) pursuant to F.R.C.P. 26. Attached hereto as Exhibit B is a true and correct copy of Mr. Sills' expert report, dated January 12, 2007.

1 5. Attached hereto as Exhibit C is a true and correct copy of the initial
2 rebuttal report of Defendants' financial expert, Franklin Johnson, dated February
3 9, 2007.

4 6. Attached hereto as Exhibit D is a true and correct copy of the
5 Stipulation re: Scheduling Order and Order Thereon, entered by the Court on
6 March 20, 2007.

7 7. Plaintiffs submitted a noticed motion to compel outstanding
8 discovery on April 23, 2007. A hearing was held before Magistrate Zarefsky on
9 May 14, 2007. On August 8, 2007, this Court withdrew the reference to
10 Magistrate Zarefsky. On August 13, 2007, this Court heard further argument
11 regarding Plaintiffs' outstanding motions to compel, and issued an order on that
12 date, directing a damages-related audit of Defendants by Mr. Sills. Attached
13 hereto as Exhibit E is a true and correct copy of the Court's August 13, 2007
14 Order.

15 8. After Defendants refused to stipulate to reasonably extend the time
16 for Mr. Sills to conduct a bi-coastal audit, Plaintiffs filed an *ex parte* application
17 on September 14, 2007, seeking such extension. Defendants vigorously opposed
18 that application in their opposition filed on September 17, 2007 and stressed the
19 looming pre-trial schedule and that thirty days was sufficient time. At the
20 September 17, 2007 hearing on the parties' cross motions for summary
21 judgment, arguments on Plaintiffs' *ex parte* application were also heard and the
22 Court granted Mr. Sills a short extension.

23 9. At no point in the parties' briefing prior to the September 17, 2007
24 hearing did the Defendants ever raise the issue of expert depositions or reports.

25 10. Attached hereto as Exhibit F are true and correct copies of the
26 relevant excerpts from the transcript of the September 17, 2007 hearing.
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1 11. Attached hereto as Exhibit G is a true and correct copy of the
2 Court's Order re: Outstanding Discovery Matters, entered on September 17,
3 2007.

4 12. Attached hereto as Exhibit H is a true and correct copy of an e-mail
5 dated September 28, 2007 from Steven Sills to Amie Doft.

6 13. Attached hereto as Exhibit I is a true and correct copy of an e-mail
7 dated October 3, 2007 from Amie Doft to Steven Sills.

8 14. Attached hereto as Exhibit J is a true and correct copy of an e-mail
9 dated October 4, 2007 from Steven Sills to Amie Doft.

10 15. Attached hereto as Exhibit K is a true and correct copy of an e-mail
11 dated October 4, 2007 written by Steven Sills forwarded from me to James
12 Weinberger.

13 16. Attached hereto as Exhibit L is a true and correct copy of a letter
14 dated October 4, 2007 from me to Michael Bergman and James Weinberger.

15 17. Attached hereto as Exhibit M is a true and correct copy of an
16 excerpt from Warner Bros.' Opposition to Plaintiffs' *Ex Parte* Application for an
17 Order Compelling Defendants' Compliance, filed on October 5, 2007.

18 18. Attached hereto as Exhibit N is a true and correct copy of a letter
19 dated October 8, 2007 from James Weinberger to me.

20 19. Attached hereto as Exhibit O is a true and correct copy of a letter
21 dated October 8, 2007 from me to James Weinberger.

22 20. Attached hereto as Exhibit P is a true and correct copy of an e-mail
23 dated October 8, 2007 from Warner Bros.' Eric Birth to Steven Sills.

24 21. Attached hereto as Exhibit Q is a true and correct copy of an e-mail
25 dated October 8, 2007 from Steven Sills to Eric Birth.

26 22. Attached hereto as Exhibit R is a true and correct copy of an e-mail
27 dated October 9, 2007 from Eric Birth to Steven Sills.
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1 23. Attached hereto as Exhibit S is a true and correct copy of an e-mail
2 dated October 22, 2007 from Warner Bros.' Amie Doft to Steven Sills.

3 24. Attached hereto as Exhibit T is a true and correct copy of the Order
4 Denying Plaintiffs' October 4, 2007, Ex Parte Application (in Chambers), dated
5 October 23, 2007.

6 25. Attached hereto as Exhibit U is a true and copy of an e-mail dated
7 November 2, 2007 from Steven Sills to Amie Doft.

8 26. Attached hereto as Exhibit V is a true and correct copy of a letter
9 dated November 5, 2007 from me to Michael Bergman.

10 27. Attached hereto as Exhibit W is a true and correct copy of a letter
11 dated November 7, 2007 from Michael Bergman to me.

12 28. On November 9, 2007, I discussed with DC's counsel resolving
13 whether WB's film, television and merchandising statements and payments to
14 DC were reflected in the management summaries provided by DC (i.e., "Blue
15 Books").

16 29. Attached hereto as Exhibit X is a true and correct copy of an e-mail
17 dated November 9, 2007 from me to James Weinberger.

18 30. Attached hereto as Exhibit Y is a true and correct copy of an e-mail
19 dated November 13, 2007 from James Weinberger to me.

20 31. Attached hereto as Exhibit Z is a true and correct copy of the
21 Stipulation re: Scheduling Order, filed by the parties on November 15, 2007.

22 32. Attached hereto as Exhibit AA is a true and correct copy of the
23 Court's Order re: Scheduling of Case No. CV04-8400-SGL (RZx), entered
24 November 16, 2007.

25 33. Attached hereto as Exhibit BB is a true and correct copy of a letter
26 dated November 20, 2007 from me to Michael Bergman.

27 34. On November 23, 2007, at approximately 6:00 a.m., a wildfire
28 completely destroyed my Malibu home. I was forced to immediately flee the

1 premises with my wife and three children without our belongings. The fire
2 completely destroyed our house and all of its contents. I will need to rebuild my
3 home from scratch.

4 35. On Monday, November 26, 2007 I was finally able to visit my
5 property. While there I was interviewed by a local news team from Channel 4
6 and a reporter from the Los Angeles Times. A video clip of this interview which
7 shows the destruction can be found at <http://video.knbc.com/player/?id=188740>.

8 Attached hereto as Exhibit CC are true and correct copies of the November 27,
9 2007 *Los Angeles Times* (my destroyed home is on the cover) and the *Los*
10 *Angeles Daily News* articles discussing the destruction of my home.

11 36. On November 26, 2007, I contacted Defendants' counsel to inform
12 them of the destruction and to request a six-week continuance of the trial date in
13 light of this disaster. After initially agreeing to this extension, Defendants soon
14 backtracked, refusing to agree to a continuance unless Plaintiffs granted them
15 discovery concessions.

16 37. On December 4, 2007, I once again met-and-conferred
17 telephonically with Defendants' counsel regarding the six-week continuance of
18 the trial schedule. Therein, Defendants expressly *conditioned* their assent to
19 such a continuance on Plaintiffs conceding double the time for their expert to
20 submit a rebuttal report and agreeing to Sills' deposition, long after the March
21 30, 2007 expert deposition cut-off. Notwithstanding Defendants' improper
22 attempt to leverage my misfortune, I stated that Plaintiffs would agree as to both
23 issues regarding the parties' financial experts, if Defendants simply resolved a
24 handful of remaining gaps in the financial information requested but not
25 received during Sills' audit in order to ensure that both parties had sufficiently
26 accurate information to conduct a constructive settlement mediation.
27 Defendants flatly refused this request.

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1 38. On December 4, 2007, Anjani Mandavia informed me by telephone
2 that Defendants would stipulate to an extension of the trial date due to the fire,
3 but would apply *ex parte* regarding the time to serve their expert's rebuttal
4 report. I reiterated at this time that such outstanding discovery issues regarding
5 the parties' financial experts could readily be resolved by counsel.

6 39. On December 6, 2007, before service of Defendants' application,
7 Plaintiffs sent a letter to Defendants outlining their position and again
8 advocating informal resolution of open issues regarding the parties' financial
9 experts. Attached hereto as Exhibit DD is a true and correct copy of a letter
10 dated December 6, 2007 from me to Michael Bergman and Anjani Mandavia.

11 I declare under penalty of perjury of the laws of the United States of
12 America that the foregoing is true and correct.

13 Executed on December 10, 2007 in Los Angeles, California.

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Marc Toberoff