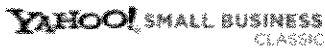


# EXHIBIT Q



Print - Close Window

**Subject:** Superman Litigation  
**Date:** Mon, 8 Oct 2007 19:58:02 -0700  
**From:** "Steven Sills" <ssills@ghjadvisors.com>  
**To:** Eric.Birth@warnerbros.com, "Doft, Amie" <Amie.Doft@warnerbros.com>  
**CC:** "Myles Higa" <mhiga@ghjadvisors.com>, "Sherri Carstens" <scarstens@ghjadvisors.com>

**From:** Birth, Eric [mailto:Eric.Birth@warnerbros.com]  
**Sent:** Monday, October 08, 2007 4:59 PM  
**To:** Steven Sills  
**Cc:** Doft, Amie  
**Subject:** Superman Litigation Audit.

*Eric,*

*Please see my responses in italics following your comments:*

Steve,

Amie had to leave early today for an appointment, so I am providing you with this update on where we are with respect to your October 4, 2007 requests, including the materials that we delivered to your WB office today. Our comments are in blue.

1. WBCP Licensing DC Comics Royalty Statements for the periods after September 2006. To the extent these have not already been provided, we anticipate delivering them to your WB office tomorrow. ***Thank you. Myles will stop by in the morning and pick up whatever materials you have provided.***
2. Supporting detail for WBCP Licensing DC Comics Royalty Statements on a per-character basis. This information is not maintained on a per-character basis. We are, however, preparing updated runs of Warner Bros. Consumer Products Licensing, Superman Analysis Summary - Earned Royalties, Unallocated Cash Receipts, DC Revenue Summary and Direct Costs, which covers all license agreements that include a Superman property (but which may also include non-Superman properties). ***Could you also provide a narrative explanation for the relationship between these various reports and an explanation as to what these reports represent?***
3. Please provide *all* statements received by you from DC for all Superman and Superboy properties. We understand that DC has provided all such statements. ***I have been informed by counsel that Warner should be providing this information regardless of what was provided by DC.***
4. "Superman Returns":
  - The *final* cost report and production cost bible. This is being delivered to your office at WB today.
  - June 30, 2007 participation statements for all third party profit participants, including Legend (a.k.a. Legendary). This is being delivered to your office at WB today.
  - Please provide the VCAS reports labeled "Superman Returns" (we have only VCAS reports labeled "Bryan Singer J Extd") reflecting all home video revenues generated by the Picture. The report that

you were provided is the correct report for "Superman Returns." The label of the title in VCAS is not relevant.

- Foreign home video manufacturing detail as of June 30, 2007. This has already been provided. ***It is my understanding that Sherri spoke with Amie about this matter. The expense documentation we received did not include manufacturing detail for home video. We would appreciate it if you could provide this information.***

- Actual residuals paid through June 30, 2007. As you know from your many years of experience with Warner Bros. audits, this information takes considerable time to process, and should have been requested at the beginning of the audit process. On an emergency basis, we may be able to provide this information within two weeks, although it could take longer. ***This information was requested in Plaintiffs' original request for documents and in their later Motion To Compel which resulted in the Court ordering my audit of WB. Regardless, we appreciate your agreeing to provide this information as soon as possible.***

5. "Smallville":

- June 30, 2007 participation statements for all third party profit participants. There are none yet. ***Since we received June 30, 2007 detail for all projects (income and expense runs, ITS, etc.), the participation statements for the same period are required. Please let us know and provide these as soon as they are available?***

- Foreign home video manufacturing detail as of June 30, 2007. This has already been provided. ***See Superman Returns response above.***

- Production cost detail/bible. We anticipate delivering this to you tomorrow.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.***

- Home video release schedule for the Pilot; Years 1 – 3; Years 6 and 7. This is being delivered to your WB office today.

6. "The Adventures of Superman":

- All financial data or participation statements for this property since April 1999, including the new DVD release on October 28, 2006. We anticipate providing this information tomorrow.

7. "Atom Man v. Superman" and "Superman" (1948):

- All financial data or participation statements for these properties since April 1999, including the new DVD release on November 28, 2006. We anticipate providing this information tomorrow.

8. "The Adventures of Superboy":

- Any financial data or participation statements for this property since April 1999, including the new DVD release on June 20, 2006. We anticipate providing this information tomorrow.

9. "Science of Superman":

- Any participation statements issued for this property through June 30, 2007. There are none. **See *Smallville response above.***
- Any home video revenue and expense detail related to this property through June 30, 2007. There are none that individually cover this title, which was packaged as EC with Superman Returns.
- Production cost detail/bible. We anticipate delivering this to you tomorrow.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See *Superman Returns response above.***

10. "Legion of Superheroes":

- Any participation statements issued for this property through June 30, 2007. There are none. **See *Smallville response above.***
- Any home video revenue and expense detail related to this property through June 30, 2007. There are none – home video released on August 28, 2007.
- Production cost detail/bible. This is being delivered to your WB office today.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See *Superman Returns response above.***

11. "Superman Doomsday":

- Any participation statements issued for this property through June 30, 2007. There are none. **See *Smallville response above.***
- Any home video revenue and expense detail related to this property through June 30, 2007. There are none – home video released on September 18, 2007.
- Production cost detail/bible. This is being delivered to your WB office today.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See *Superman Returns response above.***

12. "Superboy":

- June 30, 2007 participation statements for Paramount Pictures, Pueblo and any other third party participants. Participations statements are being delivered to your WB office today.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See Superman Returns response above.**
- Production cost detail/bible. WB did not produce this show and it does not have these materials.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.**

13. "Superman II: Donner Cut":

- Any participation statements issued for this property through June 30, 2007. No separate statements on this title – merged with Superman II. **Could you please provide any June 30, 2007 Superman II statements.**
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See Superman Returns response above.**
- Release Master Listing. This will be delivered to your WB office today.
- Production cost detail/bible. We anticipate providing this material tomorrow.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.**

14. "Krypto":

- June 30, 2007 participation statements for Cartoon Network, DC Comics and any other third party participants. Cartoon Network statement is being delivered to your WB office today. No other statements for June 30, 2007.
- Home video expense detail through June 30, 2007. Already provided. **We are missing the pencil drafts (home video statements). Please provide.**
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See Superman Returns response above.**
- Production cost detail/bible. This is being delivered to your WB office today.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.**

15. "Brainiac Attacks":

- Any participation statements issued for this property through June 30, 2007. Not applicable.

- Home video expense detail through June 30, 2007. Already provided. ***We are missing the pencil drafts (home video statements). Please provide.***
  - Foreign home video manufacturing detail as of June 30, 2007. Already provided. ***See Superman Returns response above.***
  - Production cost detail/bible. This is being delivered to your WB office today.
  - Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.***
  - Release Master listing. This is being delivered to your WB office today.
16. “Look Up In The Sky – Superman”:
- Any participation statements issued for this property through June 30, 2007 other than Bad Hat Harry (Bryan Singer). None.
  - Foreign home video manufacturing detail as of June 30, 2007. Already provided. ***See Superman Returns response above.***
  - Production cost detail/bible. We anticipate delivering this to you tomorrow.
  - Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.***
17. “Justice League”:
- June 30, 2007 participation statements for Cartoon Network, DC Comics and any other third party profit participants. None ready yet. ***See Smallville response above.***
  - The agreement between Warner and Cartoon Network Latin America. There are two agreements that relate to Justice League – one which is fully executed, and one which is in the process of being signed. Both are being delivered to your WB office today.
  - Foreign home video manufacturing detail as of June 30, 2007. Already provided. ***See Superman Returns response above.***
  - Production cost detail/bible. This is being delivered to your WB office today.
  - Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.***
  - Home Video release schedule for 01/02 and 02/03; home video release schedule for Justice League Unlimited for 05/06. This is being delivered to your WB office today.

18. "Superman Animated – Year 3":

- Any participation statements issued for this property through June 30, 2006. We are assuming this is a typo and was intended to be June 30, 2007. However, even with this change we have provided all statements for Year 3. **Yes, it was a typo. My apologies. Regarding the June 30, 2007 statement, please see Smallville response above.**
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See Superman Returns response above.**
- Production cost detail/bible. The report "Superman 1998/1999 Season – 13 Episodes – Cost Summary by Major Category as of 9/29/01" will be delivered to your WB office today. The detail report will be delivered to your WB office tomorrow.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.**
- Release master listing. This is being delivered to your WB office today.
- Home video release schedule. This is being delivered to your WB office today.

19. "The Adventures of Superboy":

- We only received documents for Season One (1988-1989). Please provide any documents related to other Seasons. This is duplicative of requests above. However, only Season One has been exploited by WB.

20. "Superman-Animated":

- We only received documents for Season Three (1998-1999). Please provide any documents related to other Seasons. We anticipate delivering materials related to post-4/99 exploitation of Seasons One and Two on DVD to your WB office tomorrow.

Regards,  
Eric

*Please let me know if you need any additional information or explanations from me.*

**Steve Sills**

**Steven D. Sills**  
Partner  
Sills & Gentile  
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Website: [www.ghjadvisors.com](http://www.ghjadvisors.com)

**Sills & Gentile**  
A DIVISION OF GREEN HANSON & JANKE LLP

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# EXHIBIT R



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**Date:** Tue, 9 Oct 2007 19:16:30 -0700 (PDT)  
**From:** mtoberoff@ipwla.com  
**Subject:** Fwd: FW: Superman Litigation Audit.  
**To:** "keith adams" <kgadams@ipwla.com>, "nic williamson" <nichwilliamson@gmail.com>

**Steven Sills <ssills@ghjadvisors.com>** wrote:

Subject: FW: Superman Litigation Audit.  
Date: Tue, 9 Oct 2007 18:58:13 -0700  
From: "Steven Sills" <ssills@ghjadvisors.com>  
To: <mtoberoff@ipwla.com>, <nwilliamson@ipwla.com>  
CC: "Myles Higa" <mhiga@ghjadvisors.com>, "Sherri Carstens" <scarstens@ghjadvisors.com>

---

**From:** Birth, Eric [mailto: Eric.Birth@warnerbros.com ]  
**Sent:** Tuesday, October 09, 2007 6:50 PM  
**To:** Steven Sills  
**Cc:** Doft, Amie  
**Subject:** Re: Superman Litigation Audit.

Dear Steve:

Our comments to your response of yesterday evening are shown in red below.

*Eric,*

*Please see my responses in italics following your comments:*

Steve,

Amie had to leave early today for an appointment, so I am providing you with this update on where we are with respect to your October 4, 2007 requests, including the materials that we delivered to your WB office today. Our comments are in blue.

1. WBCP Licensing DC Comics Royalty Statements for the periods after September 2006. To the extent these have not already been provided, we anticipate delivering them to your WB office tomorrow. *Thank you. Myles will stop by in the morning and pick up whatever materials you have provided.*
2. Supporting detail for WBCP Licensing DC Comics Royalty Statements on a per-character basis. This information is not maintained on a per-character basis. We are, however, preparing updated runs of Warner Bros. Consumer Products Licensing, Superman Analysis Summary - Earned Royalties, Unallocated Cash Receipts, DC Revenue Summary and Direct Costs, which covers all license agreements that include a Superman property (but which may also include non-Superman properties). *Could you also provide a narrative explanation for the relationship between*

*these various reports and an explanation as to what these reports represent?* These reports reflect all license agreements entered into by WBCP as licensing agent for DC Comics where the license agreement includes a Superman-related property. Some license agreements, for example, are for "Justice League," where Superman is just one of many characters; other license agreements cover the entire line of DC Comics character properties. These are updated reports of what I understand has been produced previously in this lawsuit as document nos. WB128716-19, plus accompanying detail.

3. Please provide *all* statements received by you from DC for all Superman and Superboy properties. We understand that DC has provided all such statements. ***I have been informed by counsel that Warner should be providing this information regardless of what was provided by DC.*** In reviewing what we have previously provided, we believe that all such statements were provided by Warner, however we are producing them again today in the event that something has fallen through the cracks.

4. "Superman Returns":

- The *final* cost report and production cost bible. This is being delivered to your office at WB today.

- June 30, 2007 participation statements for all third party profit participants, including Legend (a.k.a. Legendary). This is being delivered to your office at WB today.

- Please provide the VCAS reports labeled "Superman Returns" (we have only VCAS reports labeled "Bryan Singer J Extd") reflecting all home video revenues generated by the Picture. The report that you were provided is the correct report for "Superman Returns." The label of the title in VCAS is not relevant.

- Foreign home video manufacturing detail as of June 30, 2007. This has already been provided. ***It is my understanding that Sherri spoke with Amie about this matter. The expense documentation we received did not include manufacturing detail for home video. We would appreciate it if you could provide this information.*** The report you are referring to related to a specific contractual arrangement with Village Roadshow. As you know, Village Roadshow is a partner with WB on their related slates of films, and as a partner in the video participation reporting to Village Roadshow we can charge for video purchases in manufacturing expense. This is not a report that you have requested, and we do not believe that it pertains to this audit, but will provide you with a copy nonetheless.

- Actual residuals paid through June 30, 2007. As you know from your many years of experience with Warner Bros. audits, this information takes considerable time to process, and should have been requested at the beginning of the audit process. On an emergency basis, we may be able to provide this information within two weeks, although it could take longer. ***This information was requested in Plaintiffs' original request for documents and in their later Motion To Compel which resulted in the Court ordering my audit of WB. Regardless, we appreciate your agreeing to provide this information as soon as possible.*** It is our understanding that the Court ordered the damages-related audit as a resolution of the parties' dispute over financial discovery,

recognizing that WB would be burdened if it were required to respond to Plaintiffs' overly broad discovery requests. Because all financial discovery was to take place in the context of the audit, the prior requests were no longer in play, and it was your obligation to specify the information you required.

5. "Smallville":

- June 30, 2007 participation statements for all third party profit participants. There are none yet. ***Since we received June 30, 2007 detail for all projects (income and expense runs, ITS, etc.), the participation statements for the same period are required. Please let us know and provide these as soon as they are available?*** We understand that counsel have reached an agreement on this issue, and that we will provide these to you once they are ready in the ordinary course.

- Foreign home video manufacturing detail as of June 30, 2007. This has already been provided. ***See Superman Returns response above.*** See our response above.

- Production cost detail/bible. We anticipate delivering this to you tomorrow.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.*** See our response above.

- Home video release schedule for the Pilot; Years 1 – 3; Years 6 and 7. This is being delivered to your WB office today.

6. "The Adventures of Superman":

- All financial data or participation statements for this property since April 1999, including the new DVD release on October 28, 2006. We anticipate providing this information tomorrow.

7. "Atom Man v. Superman" and "Superman" (1948):

- All financial data or participation statements for these properties since April 1999, including the new DVD release on November 28, 2006. We anticipate providing this information tomorrow.

8. "The Adventures of Superboy":

- Any financial data or participation statements for this property since April 1999, including the new DVD release on June 20, 2006. We anticipate providing this information tomorrow.

9. "Science of Superman":

- Any participation statements issued for this property through June 30, 2007. There are none. ***See Smallville response above.*** See our response above.

- Any home video revenue and expense detail related to this property through June 30, 2007. There are none that individually cover this title, which was packaged as EC with Superman

Returns.

- Production cost detail/bible. We anticipate delivering this to you tomorrow. Update: Warner did not produce this project and therefore there was no production cost detail or bible kept for this project. We have assembled the expense information and it is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.** See our response above.

10. "Legion of Superheroes":

- Any participation statements issued for this property through June 30, 2007. There are none. **See Smallville response above.** See our response above.

- Any home video revenue and expense detail related to this property through June 30, 2007. There are none – home video released on August 28, 2007.

- Production cost detail/bible. This is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.** See our response above.

11. "Superman Doomsday":

- Any participation statements issued for this property through June 30, 2007. There are none. **See Smallville response above.** See our response above.

- Any home video revenue and expense detail related to this property through June 30, 2007. There are none – home video released on September 18, 2007.

- Production cost detail/bible. This is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.** See our response above.

12. "Superboy":

- June 30, 2007 participation statements for Paramount Pictures, Pueblo and any other third party participants. Participations statements are being delivered to your WB office today.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See Superman Returns response above.** See our response above.

- Production cost detail/bible. WB did not produce this show and it does not have these materials.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns.

*See Superman Returns response above.* See our response above.

13. "Superman II: Donner Cut":

- Any participation statements issued for this property through June 30, 2007. No separate statements on this title – merged with Superman II. ***Could you please provide any June 30, 2007 Superman II statements.*** If there are any June 30, 2007 statements, we will provide.
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. ***See Superman Returns response above.*** See our response above.
- Release Master Listing. This will be delivered to your WB office today.
- Production cost detail/bible. We anticipate providing this material tomorrow. Update: There was no production cost detail or bible kept for this project – we are assembling the expense information. Certain information will be delivered to your WB office today, with the remainder provided either later tonight or tomorrow.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.*** See our response above.

14. "Krypto":

- June 30, 2007 participation statements for Cartoon Network, DC Comics and any other third party participants. Cartoon Network statement is being delivered to your WB office today. No other statements for June 30, 2007.
- Home video expense detail through June 30, 2007. Already provided. ***We are missing the pencil drafts (home video statements). Please provide.*** There are none.
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. ***See Superman Returns response above.*** See our response above.
- Production cost detail/bible. This is being delivered to your WB office today.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.*** See our response above.

15. "Brainiac Attacks":

- Any participation statements issued for this property through June 30, 2007. Not applicable.
- Home video expense detail through June 30, 2007. Already provided. ***We are missing the pencil drafts (home video statements). Please provide.*** There are none.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See *Superman Returns response above***. See our response above.
  - Production cost detail/bible. This is being delivered to your WB office today.
  - Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See *Superman Returns response above***. See our response above.
  - Release Master listing. This is being delivered to your WB office today.
16. "Look Up In The Sky – Superman”:
- Any participation statements issued for this property through June 30, 2007 other than Bad Hat Harry (Bryan Singer). None.
  - Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See *Superman Returns response above***. See our response above.
  - Production cost detail/bible. We anticipate delivering this to you tomorrow. Update: Warner did not produce this project and therefore there was no production cost detail or bible kept for this project. We have assembled the expense information and it is being delivered to your WB office today.
  - Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See *Superman Returns response above***. See our response above.
17. "Justice League”:
- June 30, 2007 participation statements for Cartoon Network, DC Comics and any other third party profit participants. None ready yet. **See *Smallville response above***. See our response above.
  - The agreement between Warner and Cartoon Network Latin America. There are two agreements that relate to Justice League – one which is fully executed, and one which is in the process of being signed. Both are being delivered to your WB office today.
  - Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See *Superman Returns response above***. See our response above.
  - Production cost detail/bible. This is being delivered to your WB office today.
  - Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See *Superman Returns response above***. See our response above.
  - Home Video release schedule for 01/02 and 02/03; home video release schedule for Justice League Unlimited for 05/06. This is being delivered to your WB office today.

18. "Superman Animated -- Year 3":

- Any participation statements issued for this property through June 30, 2006. We are assuming this is a typo and was intended to be June 30, 2007. However, even with this change we have provided all statements for Year 3. **Yes, it was a typo. My apologies. Regarding the June 30, 2007 statement, please see Smallville response above.** See our response above.
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. **See Superman Returns response above.**
- Production cost detail/bible. The report "Superman 1998/1999 Season -- 13 Episodes -- Cost Summary by Major Category as of 9/29/01" will be delivered to your WB office today. The detail report will be delivered to your WB office tomorrow.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. **See Superman Returns response above.** See our response above.
- Release master listing. This is being delivered to your WB office today.
- Home video release schedule. This is being delivered to your WB office today.

19. "The Adventures of Superboy":

- We only received documents for Season One (1988-1989). Please provide any documents related to other Seasons. This is duplicative of requests above. However, only Season One has been exploited by WB.

20. "Superman-Animated":

- We only received documents for Season Three (1998-1999). Please provide any documents related to other Seasons. We anticipate delivering materials related to post-4/99 exploitation of Seasons One and Two on DVD to your WB office tomorrow.

Regards,  
Eric

***Please let me know if you need any additional information or explanations from me.***

***Steve Sills***

Eric

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**Marc Toberoff**

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Los Angeles, CA 90067  
Tel: (310) 246-3333  
Fax: (310) 246-3101  
MToberoff@ipwla.com

# EXHIBIT S



Print - Close Window

**Subject:** FW: Superman Litigation Audit.  
**Date:** Mon, 22 Oct 2007 15:57:30 -0700  
**From:** "Steven Sills" <ssills@ghjadvisors.com>  
**To:** "Sherri Carstens" <scarstens@ghjadvisors.com>, "Myles Higa" <mhiga@ghjadvisors.com>  
**CC:** mtoberoff@ipwla.com, nwilliamson@ipwla.com, "Keith Adams" <kgadams@ipwla.com>

---

**From:** Doft, Amie [mailto:Amie.Doft@warnerbros.com]  
**Sent:** Monday, October 22, 2007 3:51 PM  
**To:** Doft, Amie; Steven Sills  
**Cc:** Birth, Eric  
**Subject:** RE: Superman Litigation Audit.

Dear Steve,

Please note that there have been no residuals paid by WB on Brainiac Attacks; noted below in same **GREEN (ALL CAPS)**. Regards - amie

-----Original Message-----

**From:** Doft, Amie  
**Sent:** Monday, October 22, 2007 3:40 PM  
**To:** 'Steven Sills'  
**Cc:** Birth, Eric  
**Subject:** RE: Superman Litigation Audit.

Dear Steve,

I am providing you with this update on where we are with respect to your October 4, 2007 requests, including the materials that we delivered to your WB office today. Our comments are in **GREEN (ALL CAPS)**.

Regards - amie

-----Original Message-----

**From:** Doft, Amie  
**Sent:** Monday, October 15, 2007 4:09 PM  
**To:** 'Steven Sills'  
**Cc:** Birth, Eric  
**Subject:** Re: Superman Litigation Audit.

Dear Steve,

I am providing you with this update on where we are with respect to your October 4, 2007 requests, including the materials that we delivered to your WB office today. Our comments are in **BROWN (ALL CAPS)**.

Regards - Amie

-----Original Message-----

**From:** Birth, Eric

**Sent:** Tuesday, October 09, 2007 6:50 PM

**To:** 'SSills@GHJAdvisors.com'

**Cc:** Doft, Amie

**Subject:** Re: Superman Litigation Audit.

Dear Steve:

Our comments to your response of yesterday evening are shown in red below.

*Eric,*

*Please see my responses in italics following your comments:*

Steve,

Amie had to leave early today for an appointment, so I am providing you with this update on where we are with respect to your October 4, 2007 requests, including the materials that we delivered to your WB office today. Our comments are in blue.

1. WBCP Licensing DC Comics Royalty Statements for the periods after September 2006. To the extent these have not already been provided, we anticipate delivering them to your WB office tomorrow. *Thank you. Myles will stop by in the morning and pick up whatever materials you have provided.*

2. Supporting detail for WBCP Licensing DC Comics Royalty Statements on a per-character basis. This information is not maintained on a per-character basis. We are, however, preparing updated runs of Warner Bros. Consumer Products Licensing, Superman Analysis Summary - Earned Royalties, Unallocated Cash Receipts, DC Revenue Summary and Direct Costs, which covers all license agreements that include a Superman property (but which may also include non-Superman properties). *Could you also provide a narrative explanation for the relationship between these various reports and an explanation as to what these reports represent?* These reports reflect all license agreements entered into by WBCP as licensing agent for DC Comics where the license agreement includes a Superman-related property. Some license agreements, for example, are for "Justice League," where Superman is just one of many characters; other license agreements cover the entire line of DC Comics character properties. These are updated reports of what I understand has been produced previously in this lawsuit as document nos. WB128716-19, plus accompanying detail.

3. Please provide *all* statements received by you from DC for all Superman and Superboy properties. We understand that DC has provided all such statements. *I have been informed by counsel that Warner should be providing this information regardless of what was provided by DC.* In reviewing what we

have previously provided, we believe that all such statements were provided by Warner, however we are producing them again today in the event that something as fallen through the cracks.

4. "Superman Returns":

- The *final* cost report and production cost bible. This is being delivered to your office at WB today.

- June 30, 2007 participation statements for all third party profit participants, including Legend (a.k.a. Legendary). This is being delivered to your office at WB today.

- Please provide the VCAS reports labeled "Superman Returns" (we have only VCAS reports labeled "Bryan Singer J Extd") reflecting all home video revenues generated by the Picture. The report that you were provided is the correct report for "Superman Returns." The label of the title in VCAS is not relevant.

- Foreign home video manufacturing detail as of June 30, 2007. This has already been provided. ***It is my understanding that Sherri spoke with Amie about this matter. The expense documentation we received did not include manufacturing detail for home video. We would appreciate it if you could provide this information.*** The report you are referring to related to a specific contractual arrangement with Village Roadshow. As you know, Village Roadshow is a partner with WB on their related slates of films, and as a partner in the video participation reporting to Village Roadshow we can charge for video purchases in manufacturing expense. This is not a report that you have requested, and we do not believe that it pertains to this audit, but will provide you with a copy nonetheless.

- Actual residuals paid through June 30, 2007. As you know from your many years of experience with Warner Bros. audits, this information takes considerable time to process, and should have been requested at the beginning of the audit process. On an emergency basis, we may be able to provide this information within two weeks, although it could take longer. ***This information was requested in Plaintiffs' original request for documents and in their later Motion To Compel which resulted in the Court ordering my audit of WB. Regardless, we appreciate your agreeing to provide this information as soon as possible.*** It is our understanding that the Court ordered the damages-related audit as a resolution of the parties' dispute over financial discovery, recognizing that WB would be burdened if it were required to respond to Plaintiffs' overly broad discovery requests. Because all financial discovery was to take place in the context of the audit, the prior requests were no longer in play, and it was your obligation to specify the information you

required. **ALREADY PROVIDED.**

5. "Smallville":

· June 30, 2007 participation statements for all third party profit participants. There are none yet. *Since we received June 30, 2007 detail for all projects (income and expense runs, ITS, etc.), the participation statements for the same period are required. Please let us know and provide these as soon as they are available?* We understand that counsel have reached an agreement on this issue, and that we will provide these to you once they are ready in the ordinary course. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**

· Foreign home video manufacturing detail as of June 30, 2007. This has already been provided. *See Superman Returns response above.* See our response above.

· Production cost detail/bible. We anticipate delivering this to you tomorrow. **ALREADY PROVIDED.**

· Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**

· Home video release schedule for the Pilot; Years 1 – 3; Years 6 and 7. This is being delivered to your WB office today.

6. "The Adventures of Superman":

· All financial data or participation statements for this property since April 1999, including the new DVD release on October 28, 2006. We anticipate providing this information tomorrow. **ALREADY PROVIDED.**

7. "Atom Man v. Superman" and "Superman" (1948):

· All financial data or participation statements for these properties since April 1999, including the new DVD release on November 28, 2006. We anticipate providing this information tomorrow. **ALREADY PROVIDED.**

8. "The Adventures of Superboy":

· Any financial data or participation statements for this property since April 1999, including the new DVD release on June 20, 2006. We anticipate providing this information tomorrow. **ALREADY PROVIDED.**

9. "Science of Superman":

- Any participation statements issued for this property through June 30, 2007. There are none. *See Smallville response above.* See our response above.

- Any home video revenue and expense detail related to this property through June 30, 2007. There are none that individually cover this title, which was packaged as EC with Superman Returns.

- Production cost detail/bible. We anticipate delivering this to you tomorrow. Update: Warner did not produce this project and therefore there was no production cost detail or bible kept for this project. We have assembled the expense information and it is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **NO RESIDUALS PAID.**

10. "Legion of Superheroes":

- Any participation statements issued for this property through June 30, 2007. There are none. *See Smallville response above.* See our response above.

- Any home video revenue and expense detail related to this property through June 30, 2007. There are none – home video released on August 28, 2007.

- Production cost detail/bible. This is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**

11. "Superman Doomsday":

- Any participation statements issued for this property through June 30, 2007. There are none. *See Smallville response above.* See our response above.

- Any home video revenue and expense detail related to this property through June 30, 2007. There are none – home video released on September

18, 2007.

- Production cost detail/bible. This is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **NO RESIDUALS PAID.**

12. "Superboy":

- June 30, 2007 participation statements for Paramount Pictures, Pueblo and any other third party participants. Participations statements are being delivered to your WB office today.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. *See Superman Returns response above.* See our response above.

- Production cost detail/bible. WB did not produce this show and it does not have these materials.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **NO RESIDUALS PAID.**

13. "Superman II: Donner Cut":

- Any participation statements issued for this property through June 30, 2007. No separate statements on this title – merged with Superman II. *Could you please provide any June 30, 2007 Superman II statements.* If there are any June 30, 2007 statements, we will provide.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. *See Superman Returns response above.* See our response above.

- Release Master Listing. This will be delivered to your WB office today.

- Production cost detail/bible. We anticipate providing this material tomorrow. Update: There was no production cost detail or bible kept for this project – we are assembling the expense information. Certain information will be delivered to your WB office today, with the remainder provided either later tonight or tomorrow. **ALREADY PROVIDED.**



- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**

14. "Krypto":

- June 30, 2007 participation statements for Cartoon Network, DC Comics and any other third party participants. Cartoon Network statement is being delivered to your WB office today. No other statements for June 30, 2007.

- Home video expense detail through June 30, 2007. Already provided. *We are missing the pencil drafts (home video statements). Please provide.* There are none.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. *See Superman Returns response above.* See our response above.

- Production cost detail/bible. This is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **NO RESIDUALS PAID.**

15. "Brainiac Attacks":

- Any participation statements issued for this property through June 30, 2007. Not applicable.

- Home video expense detail through June 30, 2007. Already provided. *We are missing the pencil drafts (home video statements). Please provide.* There are none.

- Foreign home video manufacturing detail as of June 30, 2007. Already provided. *See Superman Returns response above.* See our response above.

- Production cost detail/bible. This is being delivered to your WB office today.

- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **NO RESIDUALS PAID.**

- Release Master listing. This is being delivered to your WB office today.

16. "Look Up In The Sky – Superman”:

- Any participation statements issued for this property through June 30, 2007 other than Bad Hat Harry (Bryan Singer). None.
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. *See Superman Returns response above.* See our response above.
- Production cost detail/bible. We anticipate delivering this to you tomorrow. Update: Warner did not produce this project and therefore there was no production cost detail or bible kept for this project. We have assembled the expense information and it is being delivered to your WB office today.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **NO RESIDUALS PAID.**

17. "Justice League”:

- June 30, 2007 participation statements for Cartoon Network, DC Comics and any other third party profit participants. None ready yet. *See Smallville response above.* See our response above. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**
- The agreement between Warner and Cartoon Network Latin America. There are two agreements that relate to Justice League – one which is fully executed, and one which is in the process of being signed. Both are being delivered to your WB office today.
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. *See Superman Returns response above.* See our response above.
- Production cost detail/bible. This is being delivered to your WB office today.
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. *See Superman Returns response above.* See our response above. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**
- Home Video release schedule for 01/02 and 02/03; home video release schedule for Justice League Unlimited for 05/06. This is being delivered to your WB office today.

18. "Superman Animated – Year 3":

- Any participation statements issued for this property through June 30, 2006. We are assuming this is a typo and was intended to be June 30, 2007. However, even with this change we have provided all statements for Year 3. ***Yes, it was a typo. My apologies. Regarding the June 30, 2007 statement, please see Smallville response above.*** See our response above.
- Foreign home video manufacturing detail as of June 30, 2007. Already provided. ***See Superman Returns response above.***
- Production cost detail/bible. The report "Superman 1998/1999 Season – 13 Episodes – Cost Summary by Major Category as of 9/29/01" will be delivered to your WB office today. The detail report will be delivered to your WB office tomorrow. **ALREADY PROVIDED.**
- Actual residuals paid through June 30, 2007. See comments above re Superman Returns. ***See Superman Returns response above.*** See our response above. **THIS IS BEING DELIVERED TO YOUR OFFICE AT WB TODAY.**
- Release master listing. This is being delivered to your WB office today.
- Home video release schedule. This is being delivered to your WB office today.

19. "The Adventures of Superboy":

- We only received documents for Season One (1988-1989). Please provide any documents related to other Seasons. This is duplicative of requests above. However, only Season One has been exploited by WB.

20. "Superman-Animated":

- We only received documents for Season Three (1998-1999). Please provide any documents related to other Seasons. We anticipate delivering materials related to post-4/99 exploitation of Seasons One and Two on DVD to your WB office tomorrow.

Regards,  
Eric

***Please let me know if you need any additional information or explanations from me.***

***Steve Sills***

||

Eric

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# EXHIBIT T

**PRIORITY SEND**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
3470 Twelfth Street, Riverside, CA 92501  
CIVIL MINUTES -- GENERAL

Case No. CV 04-08400-SGL (RZx)

Date: October 23, 2007

Title: JOANNE SIEGEL, an individual; and LAURA SIEGEL LARSON; an individual -v- WARNER BROS. ENTERTAINMENT INC., a corporation; TIME WARNER INC., a corporation; DC COMICS INC., a corporation; and DOES 1-10

=====

PRESENT: HONORABLE STEPHEN G. LARSON, UNITED STATES DISTRICT JUDGE

Jim Holmes  
Courtroom Deputy Clerk

None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None present

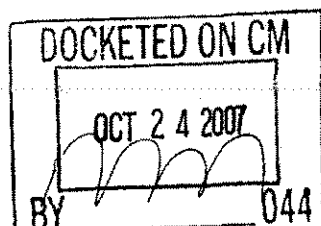
None present

PROCEEDINGS: ORDER DENYING PLAINTIFFS' OCTOBER 4, 2007, EX PARTE APPLICATION (IN CHAMBERS)

The Court has received and reviewed plaintiffs' October 4, 2007, ex parte application for an order compelling defendants' compliance with the Court's September 17, 2007, discovery order, and defendants' opposition thereto. The basic subject matter of the ex parte application concerns defendants' production of its internal profit projections (commonly referred to in the entertainment industry as "ultimates") for, among other things, its movie Superman Returns and the television series Smallville, as well as the turnover of documentation regarding a reserve account defendants purportedly created in anticipation of the parties' settlement of the present dispute, such documentation being referred to by the parties as the "settlement reserve account documents."

Before addressing each of the production issues, some prefatory remarks are in order. From reviewing the parties' correspondence it is apparent to the Court that the source of the parties' dispute stems from the parties' divergent understanding of both the scope and extent of the document production required by the Court's September 17, 2007, Order, a proper understanding of which turns on the impact the Court's earlier August 13, 2007, discovery order had on plaintiffs' then existing motions to compel, which themselves encompassed the same subject matter as the production issues in the present ex parte request. It is to that earlier

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discovery order that the Court turns.

On August 13, 2007, the Court conducted a hearing regarding, among other things, plaintiffs' still unresolved April 23, 2007, motions to compel. Among the document requests at issue in those motions were the "ultimates" as well as the "settlement reserve account." At the conclusion of the hearing, the Court issued an order allowing plaintiffs to conduct a "damages-related audit" of defendants' businesses. As to the remaining matters contained in plaintiffs' motion to compel, the Court denied the motions in favor of requiring the parties to engage in a meet and confer process to see whether these matters could be resolved without further intervention by the Court. It was in this sense that the Court "**GRANTED** in part and **DENIED** in part" the "first and second motions" to compel. Toward that end, the Court ordered the parties to "meet and confer in person on or before August 24, 2007, to identify, and attempt in good faith to resolve, any outstanding discovery disputes related to these two motions" and, if no such resolution was reached, granted the parties "leave to file with this Court a Joint Stipulation . . . identifying any outstanding discovery disputes related to these two motions," with "[s]aid Joint Stipulation . . . to be filed before this Court . . . on or before September 21, 2007."

Plaintiffs' apparent belief that their earlier filed motions to compel define the boundaries of defendants' document production obligations under the Court's August 13, 2007, and September 17, 2007, discovery orders is manifestly mistaken. Outside of allowing a damages-related audit of defendants' businesses, the Court denied those motions in favor of the parties returning to the meet and confer process to see what they could agree to and what remained for the Court to resolve; such remaining outstanding matters to be the subject of a Joint Stipulation to be filed with the Court by September 21, 2007. That is to say, the Court returned the parties to square one insofar as the outstanding discovery matters were concerned.

No such Joint Stipulation was ever filed with the Court. Admittedly, some of this was due to the fact that the parties essentially argued and the Court ruled upon their still outstanding discovery disputes during the September 17 hearing (which occurred before the time to file a Joint Stipulation had passed). Nonetheless, lacking any such joint stipulation, defendants' discovery obligations in this matter are limited to what the parties' agreed to during the subsequent meet and confer process as well as the arguments of counsel during the September 17, 2007, hearing. This idea was expressed by the Court during the September 17, 2007, hearing itself: "It's been represented in the papers, I think by both sides, that this is the final discovery dispute; that all of the other matters that had been briefed before Judge Zarefsky [i.e., the issues dealt with in plaintiffs' April 23, 2007, motions to compel,] and that [the remainder] you have subsequently met and conferred on have been resolved."

Having defined the boundaries of defendants' obligations under the September 17 Order, the Court now turns to the production issues themselves.

A. Ultimates

The Court's September 17, 2007, discovery order required defendants to produce, by

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September 21, 2007, "all requested 'ultimates' as referenced in the September 14, 2007, Declaration of Steven Sills at ¶¶ 10-11." Steven Sills is plaintiffs' forensic accountant expert who, by earlier order of this Court, was given leave to conduct a damages-related audit of defendants Time Warner, Inc., Warner Bros Entertainment, Inc., Warner Bros Television Production, Inc., and DC Comics. The time for Mr. Sills to complete his damages-related audit was extended by the Court's September 17, 2007, Order from September 17, 2007, to October 9, 2007. Plaintiffs complain that defendants have not complied with the September 17, 2007, Order because they have furnished only the "current" ultimates (meaning only ongoing future projections for the properties in question) as opposed to the "historic" ultimates for those properties (meaning what defendants had projected in the past the properties would make)

As noted above, the earlier August 13, 2007, Order of the Court is important as it served to limit the parties then-outstanding discovery disputes, notably plaintiffs' April 23, 2007, motion to compel the production of certain documents from defendants, including that of the demand for both the current and historic ultimates for the Superman Returns movie and the Smallville television series. Instead of addressing the substance of the various document requests, the Court took the middle ground of allowing plaintiffs' forensic accountant Mr. Sills to conduct a damages-related audit with the understanding that defendants would fully cooperate in producing Mr. Sills' document requests in conducting that audit. The parties were specifically directed by the Court that any issues left outstanding after the August 13, 2007, order were to be resolved by the parties through a meet and confer process which, if unsuccessful, would require them to submit a Joint Stipulation to preserve their objections.

During his audit, Mr. Sills requested on September 5, 2007, that Warner Bros. provide him with the "[c]urrent ultimate revenue and expense analysis for all Superman/Superboy related projects." (Decl. Wayne M. Smith, Ex. A (emphasis added)). In a letter dated September 7, 2007, defendants refused to provide such "current ultimates," arguing that "'ultimates' are simply internal projections about the anticipated performance of a property, and they are not properly included in this or any audit procedure, nor are they of any probative value with respect to the claims at issue in this litigation." (Decl. Marc Toberoff, Ex. J at 2). Plaintiffs thereafter began the process of filing a motion to compel the production of Mr. Sills' request for the "current ultimates." In the body of the proposed motion to compel, plaintiffs specifically made reference to defendants' failure to comply with Mr. Sills' "direct request for [the] same" and noted in particular defendants' "refus[al] to turn over any 'ultimates' for their 'Superman' or 'Superboy' properties" as "Sills requested." (Decl. Marc Toberoff, Ex. L at 3 & 10).

Before the motion could be filed with the Court, the Court heard oral arguments on the parties' cross-motions for partial summary judgment. At the conclusion of the oral argument, the Court inquired about plaintiffs' September 14, 2007, ex parte application to extend the time to complete the damages-related audit by two months. During the ensuing colloquy, Mr. Sills' declaration submitted in connection with the September 14 ex parte request became the focus of discussion. Plaintiffs' counsel repeatedly referred the Court to Mr. Sills' stated need for additional time, stating at one point, "I would ask that you take a very close look at Steve Sills' declaration." Mr. Sills' request for additional time prompted charges from defendants that Mr. Sills had



essentially taken a lackadaisical approach to conducting the audit once it was ordered to take place by the Court's August 13, 2007, order. This led to the following exchange between the Court and plaintiffs' counsel:

THE COURT: I want you to have the information. You've had carte blanche for the last 30 days, and my question is, why don't you have everything that you need at this point?

MR. TOBEROFF: Because Mr. Sills has told us that it is a literal impossibility to perform a bi-coastal audit of both D.C. and Warner Bros, pertaining not just to one motion picture but multiple different forms of programming, and to be able to arrive at an intelligent assessment in 30 days. . . . All he needs is a reasonable amount of time to complete that audit. And I believe that defendants, who were the ones who should have given us this information earlier and didn't, shouldn't be heard to complain about giving us the time needed to perform this audit in the first place.

THE COURT: Let me ask you this: Besides the ultimates, is there any other documents that Mr. Sills needs that he has not gotten?

MR. TOBEROFF: Mr. Sills has gotten major categories of documents. He's still going over them. As I said, I can't answer that question exactly, because in the process, you see something that doesn't comport with something else, and then you have to —

THE COURT: Let me rephrase it, then. At this date, are the ultimates the only document that he has identified that he has not received that he needs for his audit?

MR. TOBEROFF: He just received — to answer that question, he just received on Friday, I believe, a whole pile of information which he hasn't had the opportunity to completely go through.

As can be discerned from this colloquy, when the Court spoke of the ultimates it was addressing it through the lens of Mr. Sill's request for them as he was conducting his audit (and

that defendants then denied providing, which prompted the drafting of the never-filed motion to compel), not through plaintiffs' earlier April 23, 2007, motion to compel or its earlier served discovery requests.

For this reason, the Court specifically cited, in its September 17 Order, Mr. Sills' September 14, 2007, declaration as defining the scope of production for the ultimates. Significantly, Mr. Sills' September 14, 2007, declaration recites the requests for documents he submitted to Warner Bros. (once the damages-related audit commenced) and Warner Bros.' response to those requests. (Decl. Marc Toberoff, Ex. M ¶¶ 6-7). Later in his declaration, Mr. Sills singled out for special attention his request for the ultimates made during the course of the audit itself: "Additionally, I requested that Defendants provide their 'ultimates' for their 'Superman' and 'Superboy' derivative works." (Decl. Marc Toberoff, Ex. M ¶ 10). Thus, the only request made by Mr. Sills for ultimates at that time was the request contained in his September 5, 2007, e-mail, wherein he requested the "current ultimates" for those properties.

Given that the Court's September 17, 2007, discovery order was cabined to the request Mr. Sills had made (not the request of plaintiffs' earlier April 23, 2007, motion to compel), and that request was limited to the "current ultimates," plaintiffs' *ex parte* application to compel defendants to comply with the September 17 discovery order is **DENIED** insofar as the ultimates are concerned.<sup>1</sup>

#### B. Settlement Reserve Account Documents

The Court's September 17, 2007, discovery order also required defendants to produce by September 21, 2007, "the 'reserve account documents' to plaintiffs." Plaintiffs' present *ex parte* seeks for defendants to "immediately produce all documents relating to the 'reserve account' . . . , including all communications relating thereto and all documents supporting the amounts contained therein" (Pls' *Ex Parte* Appl. at 2), namely, "the customary accounting schedules detailing such computations." (Pls' Memo. in Supp. at 20). Instead, plaintiffs contend they only received "documents . . . 'reflect[ing]' a naked balance total." (Pls' Memo. in Supp. at 20).

---

<sup>1</sup> Once Mr. Sills received the current ultimates from defendants, he requested that they provide "the basis and supporting documentation" for certain line items contained therein. (Decl. Steven Sills, Ex. A). Plaintiffs contend that defendants stated that they "would not provide any follow-up clarification to Mr. Sills' request" (Pls' *Ex Parte* Request at 6), notably "the information necessary to verify that the percentages charged for production overhead costs and the differing distribution fees shown on the 'ultimates' reflect actual costs incurred." (Decl. Steven Sills ¶ 8). This point of dispute has since been rendered moot by defendants' un-rebutted representation that, on October 3, 2007, they "produced documentation containing the backup information requested by Mr. Sills – cash flows related to the ultimates, and Ms. Doft answered Mr. Sills' questions regarding the bases for the percentages used in the ultimates calculation." (Defs' Opp. at 5).

Plaintiffs' ex parte request goes far beyond what the parties had themselves agreed was required for defendants to produce. This is important because the only reason the Court made mention of the "settlement reserve account documents" in its September 17, 2007, Order was simply to memorialize what the parties themselves represented during the September 17 hearing that they had agreed was to be produced. Notably, during oral argument at the September 17 hearing, plaintiffs' counsel acknowledged that, "[i]n the course of meeting and conferring pursuant to your order regarding outstanding requests, we have come to an agreement with respect to certain documents, which we have not yet all received, and we've come to an understanding with the defendants that even though they did not give us those documents when they had hoped to give them to us, they will not use the joint stipulation schedule against us should they not give us the documents. And we believe they will give us the documents." The correspondence between the parties during their meet and confer reveals that the documents to which plaintiffs' counsel referred as subject of the "agreement" were the settlement reserve account documents. (Decl. Marc Toberoff, Exs. I, K). This was confirmed by defense counsel during the hearing:

THE COURT: What about these supplemental documents that Mr. Toberoff just referred to regarding [w]hat you're supposed to produce but that he has not received yet?

MR. PERKINS: I can speak to that, Your Honor.

THE COURT: Thank you.

MR. PERKINS: These are, I believe, documents from DC Comics, and there's one category of documents that we had trouble pulling them together in time, but they are —

THE COURT: And how do you refer to these documents?

MR. PERKINS: They are the reserve account documents.

....

THE COURT: Are you producing them?

MR. PERKINS: Yes, we are.

THE COURT: When?

MR. PERKINS: This week, Your Honor.

The parameters of defendants obligations to produce the settlement reserve account

documents are set forth in the correspondence exchanged between the parties following the August 13, 2007, discovery order. The August 30, 2007, letter from James Weinberger to plaintiffs' counsel references the only documented evidence as to what specifically the parties' had agreed to following their August 17, 2007, meet and confer:

With respect to the settlement reserve account referenced in DC's counterclaim, I confirm our conversation that the settlement reserve is an accounting of liability under the settlement agreement. None of the Defendants has ever represented to you, your clients, or to the Court that an actual escrow fund had been created. As I advised you, the only documents in DC's possession, custody and control which reflect this reserve are (i) the general ledger, which incorporates the reserve in its balances but does not have line-item entries showing the precise amounts owed to the Siegels, and (ii) statements prepared periodically (with some gaps) that show the relevant balances. As we discussed, subject to your agreement that production will not constitute any waiver of privilege, we will provide you with copies of all of these summary statements prepared by DC which reflect the balances in the account as of the date listed. We are collecting these documents now; I will let you know when they are available.

(Decl. Mark Toberoff, Ex. G at 3).

Nowhere in the August 30, 2007, letter did defense counsel represent that defendants would produce, as now suggested by plaintiffs, "the schedules and other documentation demonstrating the computations and assumptions underlying" these periodic statements. (Pls' Memo. in Supp. at 2). Even more importantly, plaintiffs' counsel never communicated to defense counsel following receipt of this letter that anything contained therein misstated the nature of the parties' agreement concerning production of the settlement reserve account documents.

Later plaintiffs' counsel affirmed the nature of the parties' agreement with respect to the nature and scope of production relating to the settlement reserve account documents during a telephone conversation with defense counsel on September 11, 2007. Counsel's affirmance is reflected in a follow up letter defense counsel sent to plaintiffs' counsel on the same day, in which defense counsel noted from "our discussion today . . . some concerns you raised regarding our meet and confer on outstanding DC Comics discovery issues" and "confirm[ed] that in the event DC does not produce the statements evidencing the settlement reserve account as we agreed to do in my August 30, 2007, letter . . . , we will not oppose a motion to compel on the grounds that it was served after the September 11, 2007, deadline for serving a joint stipulation under the Court's August 13, 2007 Order." (Decl. Marc Toberoff, Ex. K at 1 (emphasis added)). Again, plaintiffs' counsel remained silent, not raising any objection or qualification to the nature and scope of the parties' agreement concerning production of the settlement reserve account documents that was set forth in defense counsel's August 30, 2007, letter.

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On September 21, 2007, defendants produced to plaintiffs 14 pages worth of summary statements concerning the settlement reserve account referred to in Mr. Weinberger's August 30, 2007, letter and his later September 11, 2007, letter. (Decl. Marc Toberoff, Ex. P). Specifically, those summary statements comprise periodic excerpts consisting of one-line quarterly total entries for "Siegel and Shuster – Superman" amidst other line entries, covering a period from September 30, 2002, through June 30, 2006 (with some gaps for that period). Such a production is entirely consistent with what defense counsel represented to plaintiffs would be produced in his August 30, 2007, letter.

Nonetheless, plaintiffs' counsel, for the first time, voiced objections to the nature of the documents produced. In a letter dated September 24, 2007, plaintiffs' counsel complained that the summaries were "highly inadequate" as they did not contain any "back-up documentation whatsoever that reflects the analysis and calculations made in arriving at" the totals indicated on the summaries themselves. Furthermore, plaintiffs' counsel complained that the summaries produced were "not current, as it only extends until 6/30/06." Then plaintiffs' counsel mentioned, again for the first time, his understanding of the parties agreement following the August 17, 2007, meet and confer and contrasted it to what was represented in defense counsel's earlier correspondence:

[I]n our August 17, 2007 "meet and confer," pursuant to the Court's August 13, 2007 order, you agreed to produce all responsive documents, without waiver of DC's purported attorney-client privilege. Notwithstanding this, your letter dated August 30, 2007, hedged and carefully backtracked by circumscribing the "reserve account" documents and your prior claims that the "reserve account" was reflected in DC's (undecipherable) general ledger (now re-stated in your August [30], 2007 [letter] as "incorporating the reserve in its balances but does not have line-item entries showing the precise amounts owed to the Siegels.")

....

Please be advised that in the event DC does not agree to produce and thereafter promptly produce all documents relating to the "reserve account" repeatedly claimed by DC and testified to by its President, Paul Levitz, that Plaintiffs will have no choice but to move ex parte regarding this troubling matter.

(Decl. Marc Toberoff, Ex. Q (emphasis in original)).

Defendants were understandingly annoyed by plaintiffs' counsel's letter, and responded by sending a letter of their own on September 25, 2007, reiterating that the documents produced relating to the settlement reserve account were in conformity with the representations they made in the August 30, 2007, letter memorializing the parties' understanding following their earlier meet

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Initials of Deputy Clerk    jh

and confer: "We said we would produce all the referenced 'statements' and we produced them . . . . We produced the documents we had previously agreed to produce on that date. If you had any problem with what we agreed to turn over as set forth in my August 30, 2007, letter — and you should know you did not — you were obliged to place that issue before the Court in a joint stipulation served on September 11. You did not." (Decl. Marc Toberoff, Ex. R at 2).

As the Court has observed earlier, in the absence of a joint stipulation filed with the Court by the time specified in the August 13, 2007, Order, plaintiffs are limited to those documents which the parties agreed to produce during their August 17, 2007, meet and confer, and the arguments of counsel presented at the September 17 hearing. Both parties presented no argument at the hearing concerning the settlement reserve account documents; in fact, each represented that they had reached agreement regarding the same. Instead, the present dispute concerns what the parties actually agreed to at their meet and confer; indeed, when raising the issue of the settlement reserve account at the September 17 hearing, plaintiffs' counsel specifically asked for the Court to require defendants to produce what the parties had already "agree[d]" to during "the course of meeting and conferring." The only evidence memorializing the parties' agreement pre-production vis-a-vis the settlement reserve account was the recitation reflected in defense counsel's August 30, 2007, letter. The Court finds it significant that plaintiffs did not once object to the parameters of the production contained in the letter or defense counsel's recitation of what the parties had agreed to regarding the settlement reserve account at any time during the three weeks from receiving the letter to when defendants' produced the documents promised in that letter. The Court construes such silence as plaintiffs' counsel's acquiescence and assent to defense counsel's understanding of the parties' agreement.

Because the documents defendants produced on September 21, 2007, regarding the settlement reserve account are in conformity with the parameters agreed to by the parties during their meet and confer, as memorialized in defense counsel's August 30, 2007, letter, the Court finds that such production was in conformity with the directive contained in the September 17, 2007, Order.

Accordingly, plaintiffs' ex parte request is **DENIED** in its entirety.

The only outstanding discovery matter left in this case (again, there being no joint stipulation filed by counsel by the time specified in the August 13, 2007, Order, and the period to complete the damages-related audit having elapsed), is that concerning the escrow documents, the subject matter of which (the documents having been transferred to the Court by the escrow attorney, Mr. David Eisen, on September 20, 2007) is contained the parties' respective briefs: The declaration of Marc Toberoff filed on September 20, 2007, the declaration of Michael Bergman filed on September 25, 2007, plaintiffs' objection to Michael Bergman's declaration filed on September 26, 2007, defendants' objection to plaintiffs' reply papers filed on September 28, 2007, and plaintiffs' objections to the second Michael Bergman declaration filed on October 1, 2007. The Court intends to issue an order shortly resolving this last remaining discovery matter.

**IT IS SO ORDERED.**

MINUTES FORM 90  
CIVIL -- GEN

10

Initials of Deputy Clerk jh

# EXHIBIT U





**Subject:** Superman Litigation

**Date:** Fri, 2 Nov 2007 20:26:41 -0700

**From:** "Steven Sills" <ssills@ghjadvisors.com>

**To:** "Doft, Amie" <Amie.Doft@warnerbros.com>

**CC:** "Sherri Carstens" <scarstens@ghjadvisors.com>, "Myles Higa" <mhiga@ghjadvisors.com>

Dear Amie:

The following issues and documents are still outstanding with respect to the audit:

**Smallville:** We requested episodic production cost bibles, which you indicated as "already provided" in your October 22, 2007 e-mail. However, we have not yet received this information. Please provide these documents.

**Superman Returns:** In his October 9, 2007 e-mail, Eric indicated that all Superman Returns statements were being delivered on that day. However, we have not yet received June 30, 2007 statements for JP Organization (Jon Peters), Chris Lee Productions, Minor Demons & Danimal, and Gil Alder Productions. Please provide these documents.

**Justice League Unlimited 05/06:** In his October 9, 2007 e-mail, Eric indicated that the home video release schedule for this title was being delivered on that day. However we have not yet received this document. Please provide.

**Science of Superman, Legion of Superheroes, Superman Doomsday:** No participation statements or home video information were provided for these titles. Does Eric's October 9, 2007 e-mail indicating that there are no participation statements or home video information for the above titles apply to June 30, 2007 or to all time periods?. Please confirm that, in fact, WB has generated **no** participation statements and has **no** home video information for these titles or provide any documents that are available.

**Superman Animated: Year 3:**

In your October 22, 2007 e-mail you indicated that the June 30, 2007 statement would be provided "today". However we have not yet received this statement. Please provide.

**Justice League, Krypto, and Superman Returns:** Although March 31 statements from DC to WB were provided for these titles, we did not received statements for June 30, 2007. Please provide or confirm that no such documents exist.

Steve Sills

**Steven D. Sills**

Partner  
Sills & Gentile  
a division of  
Green Hasson & Janks LLP  
Business Advisors and CPAs  
Member of HLB International  
10990 Wilshire Boulevard, 16th Floor  
Los Angeles, California 90024-3929

Direct Tel: (310) 873-1653  
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E-mail: [ssills@ghjadvisors.com](mailto:ssills@ghjadvisors.com)  
Website: [www.ghjadvisors.com](http://www.ghjadvisors.com)



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# EXHIBIT V

## LAW OFFICES OF MARC TOBEROFF

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LOS ANGELES, CALIFORNIA 90067

MARC TOBEROFF\*  
NICHOLAS C. WILLIAMSON  
KEITH G. ADAMS  
JEFFREY R. RHOADS

\* ALSO ADMITTED IN NEW YORK

TELEPHONE  
(310) 246-3333

FACSIMILE  
(310) 246-3101

November 5, 2007

Via Facsimile and U.S. Mail

Michael Bergman, Esq.  
Weissmann Wolff Bergman Coleman Grodin & Evall LLP  
9665 Wilshire Blvd., Ninth Floor  
Beverly Hills, CA 90212

Re: Superman/Superboy Litigations, Case Nos. 04-CV-8400, 04-CV-8776 SGL (RZx)

Dear Michael:

We note that the explanatory material and back-up documentation promised by defendant Warner Bros. regarding their current "ultimates" have not yet been produced. Specifically, during his audit Mr. Sills asked for explanations as to the basis and calculation of the percentages used for the production overhead and distribution fees and interest figures used in the ultimates, and Warner Bros represented to both plaintiffs and the Court that explanations as well as documentation would be or had been provided.

Mr. Sills initially requested this information and documentation more than a month ago. After the ultimates were finally produced, Mr. Sills asked for the following information from his contact at Warner Bros., Amie Doft, in an e-mail dated September 28, 2007:

"As a supplement to this production, please provide the basis and supporting documentation for the 11% distribution fee used in calculating the ultimates for "Superman Returns"; the basis and supporting documentation for the 12.5% distribution fee used in calculating the ultimates for the remaining titles provided; the basis and supporting documentation for the 10% production cost overhead for each of the properties provided; and the basis, supporting documentation and calculations for the interest deduction for each of the properties."

Amie Doft responded via e-mail on October 1, 2007, stating that "[w]ith regard to the distribution and production fees included in the ultimates, as you know this department does not prepare ultimates," but that "you have been provided with contracts on which these numbers are based, including those with Legend Pictures, Marquee/Tollin/Robbins and Millar & Gough." With respect to the interest calculations, Ms. Doft stated that "I

## LAW OFFICES OF MARC TOBEROFF

Michael Bergman, Esq.  
November 5, 2007  
Page 2

am advised that it was calculated against the unrecouped negative cost based on an average of prime over the relevant production term.” Mr. Sills found these terse answers insufficient, particularly since Warner Bros.’ projections under GAAP would not be based on contractual definitions. Mr. Sills therefore asked in an e-mail dated October 1, 2007 for the contact information of the individual at Warner Bros. tasked with preparing the ultimates, as he “would like to request additional details about the calculation of the distribution fees and request a copy of the interest calculations.”

Proceeding along a parallel track with Mr. Sills, I advised, in my October 1, 2007 e-mail to Anjani Mandavia, that Mr. Sills had received only vague and incomplete answers to his questions regarding the calculation of charges within the ultimates. I then also asked for contact information for an individual at Warner Bros. who would be able to answer Mr. Sills’ inquiries regarding the ultimates, and for any appropriate back-up documentation. Anjani Mandavia’s October 2, 2007 letter did not respond to these requests.

Amie Doft then stated in an October 2, 2007 e-mail that she “expect[ed] to have something” regarding the interest calculations the next day, and referred questions regarding the other calculations to counsel. However, your October 2, 2007 letter confusingly stated that “[t]he participations department has responded to Mr. Sills’ inquiries about the ultimates, and has advised him, among other things, of the basis for the interest calculations and the calculation of distribution fees and producers’ fees referenced in the ultimates,” despite the fact that the participations department had not provided an adequate or cognizable basis for the percentage fees charged. Your letter also stated that “Warner Bros. has and will continue [to] accommodate Mr. Sills’ reasonable requests for back up information regarding its current ultimates.”

In a follow-up e-mail on October 3, 2007, Ms. Doft stated that “*[i]t is my understanding that the cash flows related to the ultimates, which include the interest calculations, are being produced today directly to plaintiffs’ counsel.*” These responses clearly do not provide a basis for the calculations in the ultimates regarding the interest charges, nor do they answer Mr. Sills’ questions regarding the production and distribution charges. However, they do state that further documentation would be forthcoming and delivered to my office. Nonetheless, we never received the promised Warner Bros. documents showing the “cash flows related to the ultimates, which include the interest calculations,” from your offices or otherwise.

As noted in the Court’s October 23, 2007 Order, defendants represented to the Court and the Court believed that defendants had “produced documentation containing the backup information requested by Mr. Sills – cash flows related to the ultimates, and Ms. Doft answered Mr. Sills’ questions regarding the bases for the percentages used in the ultimates calculation.” Defendants have done neither. Please correct this oversight by

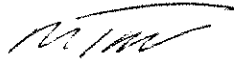
**LAW OFFICES OF MARC TOBEROFF**

Michael Bergman, Esq.  
November 5, 2007  
Page 3

producing the above-referenced documents and information immediately, in accordance with Warner Bros.' obligations and its representations to both plaintiffs and the Court.

Thank-you.

Very truly yours,



Marc Toberoff

cc: Patrick Perkins, Esq. (via Facsimile)  
James Weinberger, Esq. (via Facsimile)

Job number : 622

\*\*\* SEND SUCCESSFUL \*\*\*

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MARC TOBEROFF  
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**FACSIMILE COVER PAGE**

<b>TO:</b> Michael Bergman James D. Weinberger Patrick T. Perkins	<b>FAX:</b> 310-550-7191 212-813-5901 845-265-2819
<b>FROM:</b> Keith Adams	<b>PAGES ( including cover ): 4</b>
<b>DATE:</b> 11/5/2007	<b>RE:</b> <i>Siegel v. Superman</i>

**COMMENTS:**

Please find the attached correspondence re: Warner Bros.' production of documents

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## FACSIMILE COVER PAGE

<b>TO:</b> Michael Bergman James D. Weinberger Patrick T. Perkins	<b>FAX:</b> 310-550-7191 212-813-5901 845-265-2819
<b>FROM:</b> Keith Adams	<b>PAGES ( including cover ):</b> 4
<b>DATE:</b> 11/5/2007	<b>RE:</b> <i>Siegel v. Superman</i>

### COMMENTS:

Please find the attached correspondence re: Warner Bros.' production of documents

---

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---

# EXHIBIT W

WWBCGF

VIA FACSIMILE (310) 246-3101  
AND FIRST CLASS MAIL

November 7, 2007

Marc Toberoff, Esq.  
Law Offices of Marc Toberoff  
2049 Century Park East, Suite 2720  
Los Angeles, CA 90067

Michael Bergman  
a professional corporation  
mbergman@wwlp.com

Re: Siegel v. DC Comics

Our File No. 2231.811

Dear Marc:

This is in response to your letter to me of November 5, 2007 contending that Warner Bros. has not provided certain information and documentation in connection with the damages-related audit conducted by Mr. Sills on the Superman/Superboy properties. We are also advised that Mr. Sills sent a November 2, 2007 email to Amie Doft at Warner Bros. seeking additional materials relating to the audit. The short answer to both communications is that Warner Bros. has provided to Mr. Sills everything they represented would be provided during the course of the audit, to the extent those documents existed. We have not agreed to provide, and will not be providing, anything further related to the audit, which was to have been completed by October 9, 2007.

Addressing your letter first, I am at a loss to understand how you can now claim that you have not received the underlying cash flows related to the ultimates. Notwithstanding the italicized and underlined statements in your letter, the fact of the matter is that I sent you the promised cash flow statements on October 3, 2007, Bates-numbered WB-A05407-414, and marked "Confidential – Attorney Eyes Only." Indeed, you referenced and attached both my October 3 transmittal email and the cash flow statements, as well as Ms. Doft's responses to Mr. Sills' inquiries, to your October 4, 2007 ex parte application seeking to compel additional information on the ultimates, which was recently denied by the Court. In fact, all of the arguments you raise in your letter were raised in your ex parte application, and all of the relevant communications between the parties were placed before the Court in that context. On October 23, 2007 the Court issued its Order, in which it specifically noted, with respect to the additional information sought by Mr. Sills on the ultimates, that "[t]his point of dispute has since been rendered moot by defendants' un-rebutted representation that, on October 3, 2007, they 'produced documentation containing the backup information requested by Mr. Sills -- cash flows related to the ultimates, and Ms. Doft answered Mr. Sills' questions regarding the bases for the percentages used in the ultimates calculation.' (Defs' Opp. at 5)." Order at p. 5, n. 1. That was the end of the matter, and as far as we are concerned, the ultimates issue is now closed.

WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP  
9665 WILSHIRE BLVD. NINTH FLOOR, BEVERLY HILLS, CA 90212 T: 310.858.7888 F: 310.550.7191 WWW.WWLLPCOM  
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Marc Toberoff, Esq.  
November 7, 2007  
Page 2

Turning to Mr. Sills' November 2 email, and the claimed "outstanding" issues and documents:

*Smallville*: Mr. Sills did not request the "episodic production cost bibles" as he stated. He requested the "production cost detail/bible" (contrasting with his request for "final cost report and production cost bible" for *Superman Returns*). In light of the slash, we reasonably interpreted this as being either the production cost detail or the bibles. This interpretation makes sense given that Mr. Sills did not make this request until October 4, 2007, just 3 business days before the close of the audit, and to the extent he believed he was requesting *both* the production cost details and bibles, he should have been well aware of the fact that there was no physical way for Warner Bros. to gather the production cost bibles for 150+ episodes of *Smallville*, in that short period of time. It was a difficult enough feat to gather together the production cost details for those episodes -- which were provided -- and those documents contain the actual costs incurred in connection with the episodes.

*Superman Returns*: Mr. Sills has been provided with all the June 30, 2007 statements that were in existence as of October 9, 2007.

*Justice League Unlimited 05/06*: This title is known as *Justice League Unlimited, Season 2*, the release schedule for which was delivered to Mr. Sills' office on August 21, 2007, and was eventually picked up by Mr. Sills on September 6, 2007.

*Science of Superman, Legion of Superheroes, Superman: Doomsday*: There were no Warner Home Video numbers or participation statements generated for these properties as of October 9, 2007. *Legion of Superheroes* and *Superman: Doomsday* were not released until August 28, 2007 and September 18, 2007 respectively. *Science of Superman* was released as extra content in connection with the *Superman Returns* DVD release -- any data for that title, therefore, is reflected in the *Superman Returns* DVD numbers.

*Superman Animated: Year 3*: There was no June 30, 2007 statement on this property as of October 9, 2007, or as of Ms. Doff's October 22, 2007 email to Mr. Sills.

*Justice League, Krypto, Superman Returns*: The June 30, 2007 DC statements had not been received by Warner Bros. as of October 9, 2007. In any event, the information in these statements, even if they had been available by October 9, does not correlate to any of the other financial data Mr. Sills received in the audit as there is a one quarter lag between DC's reporting and the incorporation of that data in Warner's statements.

In short, Mr. Sills has been provided with all the documentation Warner Bros. agreed to provide in the audit, and that documentation has been in his possession for a number of weeks. We view these continuing requests as nothing more than a tactic to justify your delay in the submission of Mr. Sills' expert report. As you know, defendants have a right to have their own expert analyze Mr. Sills' report and the conclusions contained in that report before proceeding with the deposition of Mr. Sills.

WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP

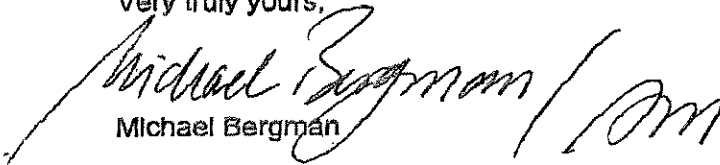
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Marc Toberoff, Esq.  
November 7, 2007  
Page 3

In addition, you have repeatedly asserted that the extensive financial documentation you have requested - and received - would ensure that the upcoming mediation would be more effective. However, in order for the mediation to be effective, defendants must receive Mr. Sills' report and conclusions well in advance of the mediation so that we can understand fully the position plaintiffs are taking with respect to the defendants' profits as to the various works at issue.

At the September 17, 2007 hearing Judge Larson ordered that the Sills report, as well as defendants' responsive report and the subsequent depositions, be scheduled "expeditiously." A delay of almost a month in completing Mr. Sills' report is clearly not expeditious. Although defendants expressly reserve their rights under FRCP 26(a)(2), demand is hereby made for the delivery to us of Mr. Sills' completed report by the close of business on November 12, 2007.

Very truly yours,

  
Michael Bergman

MB/jra

WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP

336069v1

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**FACSIMILE TRANSMISSION**

**Date:** November 7, 2007  
**From:** Michael Bergman  
**E-mail:** mbergman@wwllp.com  
**Pages:** 4 (Including cover)  
**Subject:** Siegel v. DC Comics

<b><u>Recipient(s):</u></b>	<b><u>Fax Number(s):</u></b>	<b><u>Phone Number(s):</u></b>
Marc Toberoff	(310) 246-3101	(310) 246-3333

**Message:**

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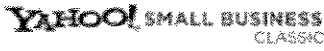
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# EXHIBIT X



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**Date:** Fri, 9 Nov 2007 15:38:06 -0800 (PST)  
**From:** mtoberoff@ipwla.com  
**Subject:** RE: Bates Numbers for DC Comics Documents  
**To:** "James Weinberger" <jweinberger@fzlz.com>

James:

We were informed in an e-mail from you some time ago that the "Blue Book" Merchandising figures reflect DC Direct's merchandising and do not include the figures in the WBCP statements to DC. Because, the WB participation statements to DC do not match the figures in DC' "Blue Book" under the heading "Publishing-Media" it likewise appears these figures in the Blue Book do not include the revenue to DC as reflected in WB's participation statements to DC (for example, for Superman Returns).

It would be helpful for all if DC could confirm this.

Thank-you.

**James Weinberger <jweinberger@fzlz.com>** wrote:

Thanks - I see the documents, though now I'm not sure I follow the question. Can you please confirm?

---

**From:** Keith Adams [mailto:kgadams@ipwla.com]  
**Sent:** Friday, November 09, 2007 2:10 PM  
**To:** James Weinberger  
**Cc:** mtoberoff@ipwla.com  
**Subject:** Re: Bates Numbers for DC Comics Documents

Mr. Weinberger

As requested, following are the bates numbers for the documents that raise the question that Marc Toberoff discussed with you earlier today: DCC00145309-10; DCC00145417-18; DC00145525-26; DCC00145634-35; DCC00145749-50; DCC00145845-46; DCC00145947-48; DCC00146053-54; and DCC00146151-52.

Sincerely,

Keith G. Adams  
Law Offices of Marc Toberoff, PLC  
2049 Century Park East, Suite 2720  
Los Angeles, CA 90067  
Telephone: (310) 246-3100  
Facsimile: (310) 246-3101  
Email: kgadams@ipwla.com

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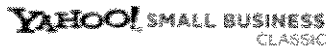


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**Marc Toberoff**

Toberoff & Associates  
2049 Century Park East, Suite 2720  
Los Angeles, CA 90067  
Tel: (310) 246-3333  
Fax: (310) 246-3101  
MToberoff@ipwla.com

# EXHIBIT Y



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**Subject:** RE: Bates Numbers for DC Comics Documents

**Date:** Tue, 13 Nov 2007 18:32:26 -0500

**From:** "James Weinberger" <jweinberger@fzlz.com>

**To:** mtoberoff@ipwla.com

**CC:** "Michael Bergman" <MBergman@wwlp.com>, "Anjani Mandavia" <AMandavia@wwlp.com>, "Adam Hagen" <AHagen@wwlp.com>, "Patrick Perkins" <pperkins@ptplaw.com>, "Roger Zissu" <RZissu@frosszelnick.com>

Marc -

Our clients' position is as follows:

Discovery is over. The damages-related audit is over. We will not be responding to this or additional inquiries of this nature.

- James

---

**From:** mtoberoff@ipwla.com [mailto:mtoberoff@ipwla.com]  
**Sent:** Friday, November 09, 2007 6:38 PM  
**To:** James Weinberger  
**Subject:** RE: Bates Numbers for DC Comics Documents

James:

We were informed in an e-mail from you some time ago that the "Blue Book" Merchandising figures reflect DC Direct's merchandising and do not include the figures in the WBCP statements to DC. Because, the WB participation statements to DC do not match the figures in DC' "Blue Book" under the heading "Publishing-Media" it likewise appears these figures in the Blue Book do not include the revenue to DC as reflected in WB's participation statements to DC (for example, for Superman Returns).

It would be helpful for all if DC could confirm this.

Thank-you.

*James Weinberger* <jweinberger@fzlz.com> wrote:

Thanks - I see the documents, though now I'm not sure I follow the question. Can you please confirm?

---

**From:** Keith Adams [mailto:kgadams@ipwla.com]  
**Sent:** Friday, November 09, 2007 2:10 PM  
**To:** James Weinberger  
**Cc:** mtoberoff@ipwla.com  
**Subject:** Re: Bates Numbers for DC Comics Documents

Mr. Weinberger

As requested, following are the bates numbers for the documents that raise the question that Marc Toberoff discussed with you earlier today: DCC00145309-10; DCC00145417-18; DC00145525-26; DCC00145634-35; DCC00145749-50; DCC00145845-46; DCC00145947-48; DCC00146053-54; and DCC00146151-52.

Sincerely,

Keith G. Adams  
Law Offices of Marc Toberoff, PLC  
2049 Century Park East, Suite 2720  
Los Angeles, CA 90067  
Telephone: (310) 246-3100  
Facsimile: (310) 246-3101  
Email: kgadams@ipwla.com

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.....

# EXHIBIT Z

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 12 Fax: 845-265-2819

13 Attorneys for Defendants and Counterclaimant

14 UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

15 JOANNE SIEGEL and LAURA  
 16 SIEGEL LARSON,

17 Plaintiffs,

18 vs.

19 TIME WARNER INC., WARNER  
 COMMUNICATIONS INC., WARNER  
 20 BROS. ENTERTAINMENT INC.,  
 WARNER BROS. TELEVISION  
 21 PRODUCTION INC., DC COMICS,  
 and DOES 1-10,

22 Defendants.

) Case Nos. [Consolidated for  
 Discovery]  
 CV 04-8400 SGL (RZx)  
 CV 04-8776 SGL (RZx)  
 Hon. Stephen G. Larson, U.S.D.J.  
 Hon. Ralph Zarefsky, U.S.M.J.

23 **STIPULATION RE:  
 SCHEDULING ORDER**

24  
 25  
 26  
 27 AND RELATED COUNTERCLAIMS.  
 28

1 Plaintiffs/counterclaim-defendants Joanne Siegel and Laura Siegel Larson  
 2 (collectively "Plaintiffs"), and defendants Warner Bros. Entertainment Inc., Time  
 3 Warner Inc., Warner Communications Inc. and Warner Bros. Television  
 4 Production Inc. and defendant/counterclaimant DC Comics (collectively  
 5 "Defendants"), by and through their respective counsel of record, and subject to  
 6 the order of this Court, hereby stipulate and agree as follows:

7 WHEREAS, pursuant to the prior stipulation of the parties, and the orders of  
 8 this Court, the following trial and pre-trial dates have been set in the "Superman"  
 9 action (Case no. CV 04-8400 SGL (RZx)):

10	Mediation Deadline	30 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
11		
12	Jury Instructions Due	30 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
13		
14		
15	Objections to Jury Instructions	7 days after jury instructions are due
16		
17	Local Rule 16 Conference	November 20, 2007
18	In Limine Motions Due	December 3, 2007
19	In Limine Oppositions Due	December 21, 2007
20	In Limine Replies Due	January 4, 2008
21	Memo of Contentions of Fact and Law	December 28, 2007
22	Witness and Exhibit Lists	
23	Proposed Voir Dire	
24	Proposed Pretrial Conference Order	
25	Pre-trial Conference	January 7, 2008 at 11:00 a.m.
26	Trial Briefs Due	January 14, 2008
27	Trial of Case No. CV 04-8400	January 22, 2008
28	Trial of Case No. CV 04-8776	Thereafter, as set by the Court

1 WHEREAS, the parties have briefed and argued substantial cross-motions  
2 for partial summary judgment on a number of separate issues and/or claims for  
3 relief in the two actions, which motions are currently under submission for  
4 decision by the Court;

5 WHEREAS, the Court's rulings on the parties' cross-motions for partial  
6 summary judgment will materially impact the parties' preparations for trial,  
7 including the matters the parties are required to address during their conference  
8 pursuant to Local Rule 16-1 in an effort to properly prepare this matter for trial,  
9 and will also materially impact any mediation efforts that the parties engage in;

10 WHEREAS, the current pre-trial schedule, including the deadlines imposed  
11 by the Federal Rules of Civil Procedure, the Local Rules, and this Court's Standing  
12 Order, will require the parties to prepare their pre-trial materials, and likely engage  
13 in the Local Rule 16-1 conference, prior to the determination on their cross-  
14 motions for partial summary judgment, resulting in potentially confusing, wasteful  
15 or duplicative effort;

16 WHEREAS, the parties believe that extending the pre-trial dates as set forth  
17 below so as to coincide with and follow in an orderly fashion the Court's ruling on  
18 the parties' cross-motions will provide for the more orderly preparation and  
19 organization of this matter for trial;

20 WHEREAS, counsel for each party certifies to the Court that the requested  
21 extensions are necessary to the orderly preparation and trial of these matters, and  
22 are not sought for any improper purpose;

23 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED,  
24 subject to the approval of the Court, that the following pre-trial dates shall be  
25 applicable to these matters:

26	Mediation Deadline	30 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
27		
28		



1	Jury Instructions Due	28 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
2		
3	Objections to Jury Instructions	7 days after jury instructions are due
4		
5	Last Day to Meet and Confer Regarding In Limine Motions	35 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
6		
7	Local Rule 16 Conference	42 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
8		
9		
10	In Limine Motions Due	56 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
11		
12	In Limine Oppositions Due	70 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
13		
14		
15	In Limine Replies Due	84 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
16		
17		
18	Memo of Contentions of Fact and Law	91 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
19	Witness and Exhibit Lists Proposed Voir Dire Proposed Pretrial Conference Order	
20	Pre-trial Conference	105 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
21		
22	Trial Briefs Due	112 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
23		
24		
25	Trial of Case No. CV 04-8400	119 days after the Court enters an Order on all of the parties' cross-motions for partial summary judgment
26		
27	Trial of Case No. CV 04-8776	Thereafter, as set by Court
28		

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IN THE ALTERNATIVE, the parties respectfully request that the Court set a status conference for the purpose of scheduling appropriate pre-trial and trial dates, taking into account the timing of the Court's ruling on the parties' pending cross-motions for partial summary judgment.

Respectfully submitted,

DATED: November 15, 2007

WEISSMANN WOLFF BERGMAN  
COLEMAN GRODIN & EVALL LLP

FROSS ZELNICK LEHRMAN & ZISSU,  
P.C.

PERKINS LAW OFFICE, P.C.

By: Michael Bergman  
Michael Bergman  
Attorneys for Defendants

DATED: November 14, 2007

LAW OFFICES OF MARC TOBEROFF,  
PLC

By: Marc Toberoff  
Marc Toberoff  
Attorneys for Plaintiffs

# EXHIBIT AA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
3470 Twelfth Street, Riverside, CA 92501  
CIVIL MINUTES -- GENERAL

Case No. CV 04-08400-SGL (RZx) Date: November 16, 2007  
CV 04-08776-SGL (RZx)

Title: JOANNE SIEGEL, an individual; and LAURA SIEGEL LARSON; an individual -v-  
WARNER BROS. ENTERTAINMENT INC., a corporation; TIME WARNER INC., a  
corporation; DC COMICS INC., a corporation; and DOES 1-10

=====

PRESENT: HONORABLE STEPHEN G. LARSON, UNITED STATES DISTRICT JUDGE

Jim Holmes  
Courtroom Deputy Clerk

None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None present

None present

PROCEEDINGS: **(IN CHAMBERS)**  
**ORDER RE SCHEDULING OF CASE NO. CV04-8400-SGL (RZx)**

The Court has received and reviewed the parties' stipulation re: scheduling order, filed on November 15, 2007. The parties stipulate and agree to continue certain scheduling dates in Case No. CV 04-8400-SGL (RZx), the "Superman" case. The Court declines to adopt the proposed dates provided by the parties.

On its own motion, the Court hereby sets the following dates in CV 04-8400-SGL (RZx):

Settlement Conference Deadline	January 16, 2008
Hearing on Motions in Limine	February 11, 2008, at 11:00 a.m.
Final Pretrial Conference	February 25, 2008, at 11:00 a.m.
Trial of Case No. CV 04-8400-SGL (RZx)	March 11, 2008, at 9:30 a.m.
Trial of Case No. CV 04-8776-SGL (RZx)	Thereafter, as set by the Court

**IT IS SO ORDERED.**

MINUTES FORM 90  
CIVIL -- GEN

Initials of Deputy Clerk: jh

# EXHIBIT BB

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\*ALSO ADMITTED IN NEW YORK

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(310) 246-3333

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November 20, 2007

Via Facsimile and U.S. Mail

Michael Bergman, Esq.  
Weissmann Wolff Bergman Coleman Grodin & Evall LLP  
9665 Wilshire Blvd., Ninth Floor  
Beverly Hills, CA 90212

Re: Superman/Superboy Litigations, Case Nos. 04-CV-8400, 04-CV-8776 SGL (RZx)

Dear Michael:

I write pursuant to Local Rule 37-1 to request a conference regarding Warner Bros.' refusal as set forth in your letter of November 7, 2007 to produce the documents that Warner Bros. previously agreed to provide to Mr. Sills and which defendants are, in any event, under a continuing obligation to produce pursuant to FRCP 26(e).

Mr. Sills asked in his September 28, 2007 e-mail for "the basis and supporting documentation" for the percentage-based distribution fees, production cost overhead, and interest rate set forth as expenses in Warner Bros.' current ultimates. Mr. Sills' request was well within the October 9, 2007 deadline for his audit. In defendants' opposition to plaintiffs' motion to compel the production of all ultimates, you represented to the Court with respect to the above that "defendants produced documentation containing the backup information requested by Mr. Sills." This is incorrect. Whereas Warner Bros. provided Mr. Sills with "cash flows" to which it applied a fixed interest rate, it failed to provide the basis of the interest rate or to demonstrate that this is the actual interest rate/cost incurred by it. Similarly, Warner Bros. failed to substantiate the varying percentages charged as a distribution fee or its overhead percentage despite Mr. Sills' reasonable request for this information well in advance of October 9. It is incumbent on Warner Bros. to promptly provide this information.

With respect to Mr. Sills' request for *Smallville*'s production cost bible, the phrase "production cost detail/bible," as Warner Bros. is well-aware, contains two names for the same material – the financial "bible" is the "production cost detail," and one is not an alternative to the other as you self-servingly state. Warner Bros' Eric Birth responded to this request by an October 8, 2007 e-mail stating: We anticipate delivering this to you tomorrow." If Mr. Birth was intending to produce, as he did, not what is understood in the trade as a "bible," but rather something else entirely – a "production cost report" – he should have so specified in his response. Your response, that Warner Bros. need not

Michael Bergman, Esq.  
November 20, 2007  
Page 2

produce the relevant *Smallville* financial bible properly requested by Mr. Sills prior to October 9, is without merit and unreasonable.

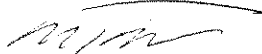
With reference to *Superman Returns*, you have stated that "Mr. Sills has been provided with all the June 30, 2007 statements that were in existence as of October 9, 2007;" with respect to *Superman Animated: Year 3*, you stated that "[t]here was no June 30, 2007 statement on this property as of October 9, 2007, or as of Ms. Doft's October 22, 2007 email to Mr. Sills;" and with respect to *Justice League*, *Krypto* and *Superman Returns*, you stated that "[t]he June 30, 2007 DC statements had not been received by Warner Bros. as of October 9, 2007," taking the thoroughly unreasonable tact that Warner Bros. need not produce statements completed after October 9, 2007.

However, on October 8, 2007, Ms. Doft agreed to provide the "June 30, 2007 participation statements for all third party participants," not simply those that had been generated as of October 9, 2007. With respect to *Superman Animated: Year 3*, *Science of Superman*, *Legion of Superheroes*, *Superman Doomsday*, and *Superman II: Donner Cut*, Eric Birth's October 9, 2007 e-mail also expressly agreed that "we [Warner Bros.] will provide these [participation statements] to you once they are ready in the ordinary course." Similarly, on October 22, 2007 Ms. Doft's responded by e-mail to Mr. Sills that the June 30, 2007 participation statements for *Superman Animated: Year 3* were "being delivered to your office at WB today," but, in fact, no such statements were ever delivered. Additionally, Warner Bros. agreed in its October 22, 2007 e-mails to provide *all statements* from DC to Warner Bros.

None of these undertakings were qualified or limited to documents generated on or before October 9, 2007. Whether or not the documents were created before or shortly after October 9, 2007 is of no moment; defendants agreed to provide them to Mr. Sills as part of the audit process. To now backtrack from those agreements and representations and withhold documents on the grounds that they were generated shortly after October 9, 2007 is manifestly improper.

Finally, Warner Bros.' refusal to produce supplemental financial documents clearly relevant to the issue of plaintiffs' damages also runs afoul of its ongoing duty under FRCP 26(e) to supplement its production. Accordingly, please provide all of Warner Bros.' most recent participation statements to DC immediately and supplement this production as new statements are completed.

Very truly yours,



Marc Toberoff

cc: Patrick Perkins, Esq. (via Facsimile)  
James Weinberger, Esq. (via Facsimile)

Job number 699

\*\*\* SEND SUCCESSFUL \*\*\*

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**FACSIMILE COVER PAGE**

<b>TO:</b> Michael Bergman James D. Weinberger Patrick T. Perkins	<b>FAX:</b> 310-550-7191 212-813-5901 845-265-2819
<b>FROM:</b> Keith Adams	<b>PAGES ( including cover ): 3</b>
<b>DATE:</b> 11/20/2007	<b>RE:</b> <i>Siegel v. Time Warner Inc.</i>

**COMMENTS:**

Please find the attached correspondence re: Audit of Warner Bros.

---

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\* ALSO ADMITTED IN NEW YORK

**FACSIMILE COVER PAGE**

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# Los Angeles Times

181

Tuesday, November 27, 2007

DESIGNATED A



## A SOMBER GLOW AFTER THE BURN

VALLEY BEATERS Los Angeles Times

*Sunset is the backdrop for the ruins of a house on Laticgo Canyon Road after fire swept through Malibu. It was in this "other" Malibu, away from the seaside glitz, that the blaze did its damage. CALIFORNIA, BH*

Tuesday, November 27, 2007

latimes.com/california

# 'Other' Malibu in the news



**COVERAGE:** A Super-Scooper drops water high above Malibu's Corral Canyon on Monday. Although past fires in the area have sometimes burned to the sea, this one was contained to the inland side of Pacific Coast Highway, sparing the city's ritzier communities.

KEVIN HEYRICK / Los Angeles Times

Away from the seaside glitz are neighborhoods of a different sort. That's where the homes burn more frequently.

By **FRYLYN LARABURA**,  
**ARI E. BLOOMBERG**  
and **KENNETH R. WEISS**  
*Times Staff Writers*

It is a tale of one city with two distinct personalities.

Seaward of Pacific Coast Highway are most of the billion-dollar, film stars and other celebrities who own oceanfront homes that unroll like flowers onto Malibu's quasi-private beaches.

On the other side of PCH, especially up the rugged canyons, are residents of a different kind. Some are wealthy, to be sure, but many are professional class or lucky longtime homeowners who bought in early.

The inland residents of Malibu are known for something else: Their homes, more frequently, are the ones that burn.

"There are two kinds of Malibu," said Mayor Jeff Jennings, recalling a description of his longtime home. "There is the beach Malibu. And there is the rocks and cactus and coyote-size-the-cat kind of Malibu."

The 53 houses lost in the weekend's Corral fire fall in the latter category, Jennings said. Concentrated in rugged Corral, Latiago and Sycamore canyons, most of them are "relatively modest homes built on quarter-acre or half-acre lots," he said. "I know a bunch of these folks. Some are teachers, some are real estate guys and some are working in the movie business. They're not movie stars."

Nancy Gauthier, 62, a critical-care nurse who now works as a systems analyst at Saint John's Health Center in Santa Monica, lost her home on Lockwood Road in Corral Canyon, which she bought in 1978 for \$150,000. All that remains are a few concrete steps leading up to what used to be a front door.

She's been through many fires. "Every time, you lose a few inches off your teeth because you grind them," she said. Still, she loves the tight-knit community, the location, the view.

"Where else can you see the bobcats and see the mountains and see the ocean and still be reasonably close to the city?" Gauthier said.

The neighbor directly behind her property, Jackie Robbins, a leather clothing designer, lost her home of more than 39 years. So did Wendy Keller, a literary agent, who would host a block party four times a year. Neighbor Steve Woods, a carpenter, played football at those gatherings.

Woods came home after a Thanksgiving hiking trip in Big Sur to find his house damaged but still standing. And, much to his relief, he found a note saying that a neighbor had rescued his

(See Malibu, Page B7)

# Fire is no stranger to the 'rocks and cactus' Malibu

[Malibu, from Page B1] dog.

The fire gutted the top floor of his house and his kitchen and demolished the wooded deck. "My backyard is like Baghdad," he said Monday, sizing up the damage with an insurance inspector.

Despite fatigue and disillusionment, the neighbors brightened when asked about their remote and rustic community. It is the farthest one up Corral Canyon Road, the one closest to state and federal parklands that straddle the mountains above them. They love the quick access to hiking trails, the views of mountains and the sea, the wildlife and the friendliness of neighbors.

On Monday, friends wearing dust masks helped Robbins pick through the blackened rubble of her home and attached leather-working studio. One of the few things left intact was a pink fiberglass surfboard with inlaid kelp fronds that Woods had made for her. She suspects a firefighter rescued the board after she had fled to safety.

"All that media talks about are the celebrities. But really, the people of Malibu have a lot of character," Robbins said. "They are really kind. They really show up for their neighbors. Every time there has been a disaster and there's been lots of them — fire, floods, earthquakes, high tides — the day after you walk into the market and people are hugging. It's a small community and a small-town mentality."

Warren Allen, an aerospace engineer, and his wife, Patricia, were among the most fortunate in the neighborhood. Firefighters took a stand at their house on Lockwood Road and saved it from everything — except a coating of ash in each room.

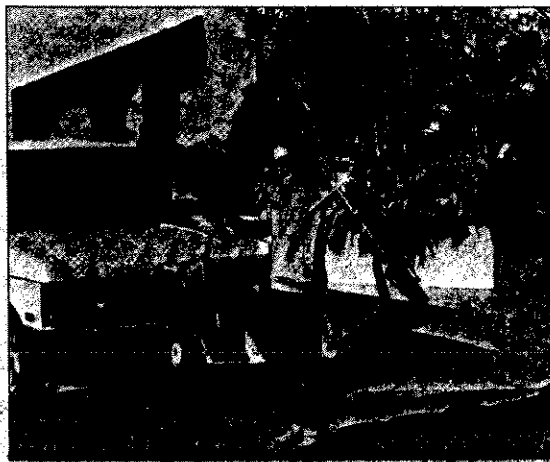
"These are working people up here," Allen said. "They all get up. They all have a job. They all have kids."

The mood was somber at Lily's Cafe near Point Dume in Malibu. Owner Lily Castro said she recognized many of her customers on television, standing next to piles of burnt ash where their houses had once stood.

"It's sad," Castro said. "You can see it in their faces."

Christine Rodgerson, a real estate agent who has lived on Corral Canyon Road for two decades, said the public has a misperception that only the rich and famous were affected by the Corral fire.

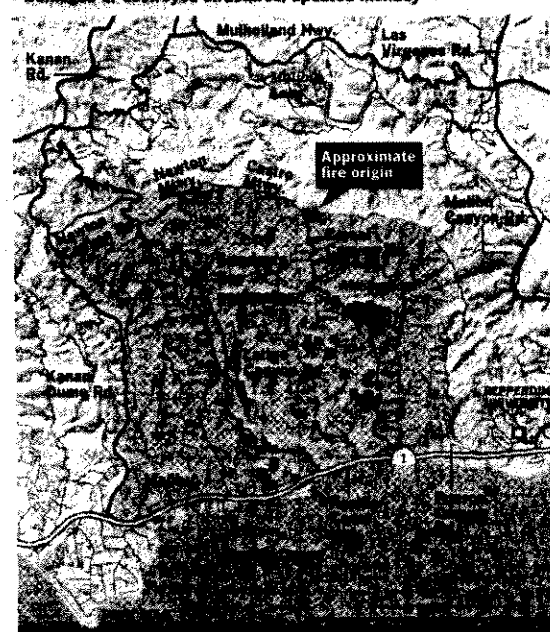
She characterized her clientele as a mixture of incomes and



**BURNED OUT:** Dahlia Toberoff, a resident of Latigo Canyon, gathers up her children's bicycle and scooter from the driveway of her home, which was destroyed in the Corral fire.

## Corral fire

■ Damaged or destroyed structures, updated Monday



Source: ESRI, TeleAtlas, Los Angeles County Fire Department, city of Malibu, Los Angeles Fire Department, National Weather Service. Graphics reporting by BOB POOL, THOMAS SUR LAUDER and TOM BRINKER

Los Angeles Times

ages.

"The wealthy people here are a very small minority," Rodgerson said. "There are people that

have lived here for decades. You have a lot of people that are buying their first homes, straining to buy their first homes. There's a

lot of working families and young professionals."

Of course, that's not true in some communities, especially exclusive gated enclaves such as the Malibu Colony and Serra Retreat, and at the mansions that stand shoulder-to-shoulder at Broad and Carbon beaches where glitterati tend to congregate — even if only for occasional weekend retreats.

Although past fires have sometimes burned to the sea, this one was contained to the inland side of Pacific Coast Highway, sparing the ritzier communities of this 27-mile-long city sandwiched between the Santa Monica Mountains and the Pacific Ocean.

Demographic data show that Malibu has a higher-than-average turnover rate, a phenomenon that doesn't surprise Madelyn Glickfeld, a lecturer at UCLA's Institute of the Environment.

"It's nuts living out here, you have to be certified," said Glickfeld, who has lived in Malibu since the 1970s and watched flames consume her house in Las Flores Canyon in 1993. She and her husband, a tax attorney, now live on Point Dume, closer to the protective moisture of the sea.

"I count 10 fires that I've been through plus an unknown number of floods," she said. "Anyone who lives here and keeps rebuilding and rebuilding needs to be checking in with someone."

Real estate agents, a primary occupation in Malibu, know that once the smoke subsides, there always seems to be someone willing to take a gamble for a piece of paradise.

Attorney Marc Toberoff was one of those drawn to Malibu eight years ago from New York City, in pursuit of the California dream view. "I would wake up, sit up and look at the ocean," he said of his beloved Spanish-style house, which burned to the ground.

He's looking for a place for him and his wife and three kids to stay in his adoptive community while he rebuilds.

"We're looking for anybody with a guest home in Malibu," Toberoff said.

"The rents are so high in Malibu. We just need to get back on our feet."

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Times staff writer Andrew Blankstein contributed to this report.

TODAY'S  
FORECAST



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November 27, 2007

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# What caused Malibu fire?

## MORE INSIDE

Malibu residents like Debbie Toberoff, right, return to their homes, or what is left of them, to pick up the pieces and begin to start over. **A3**



Tom Borens/Staff Photographer

**SAFETY:** Patrol cuts putting parkland at risk as after-hours parties, camping escape scrutiny.

By Beth Barrett  
Staff Writer

Amid severe staffing shortages, California park rangers for months have battled after-hours parties in the area near the flash point of the weekend Malibu wildfires that scorched 4,900 acres and left 53 homes in ruins, the Daily News has learned.

Rangers on Monday said they have been aware of the problem for at least the past six months and even patrolled the area less than six hours before the firesstorms are estimated to have started just hours before dawn Saturday.

While officials on Monday were still investigating the cause of the wildfires, they have said it was caused by humans and swept down from the popular gathering spot at the top of Carrizal Canyon into the Malibu Bowl community. But with only eight park rangers and supervisors — down from 15 — to patrol from Point

Mugu in Ventura County to Malibu Creek State Park, the rangers have struggled to step up patrols when high fire danger levels are declared.

"With the number of vacancies, it's very difficult to do that," said Ron Schaefer, district superintendent for the state parks Angeles District. "There are some serious challenges in terms of funding."

Los Angeles County Supervisor Zev Yaroslavsky said the agency is seriously understaffed and often has only a single ranger on

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# FIRE

FROM PAGE A1

patrol for each shift in the eastern half of the district that includes Malibu Creek State Park.

Yaroslavsky said he implored Gov. Arnold Schwarzenegger on Sunday for more resources.

"There needs to be a ratcheting up of staffing during red flag days," Yaroslavsky said. "It's on (Schwarzenegger's) radar. ... They're going to deal with it."

H.D. Palmer, spokesman for the governor's Finance Department, said there has been a slight increase in staffing for park safety positions from 726.8 positions in 2002-03 to 733.5 positions last year.

State departments are currently preparing their proposed budgets for next year, but Palmer noted it will be a "challenging" fiscal environment.

"As with any other state program, we will evaluate this in the context of our overall fiscal condition," Palmer said.

## Increase unlikely

Some state officials said it is unlikely there will be increased funding for park rangers next year as the state is facing a \$10 billion structural deficit and Schwarzenegger has ordered all departments to start preparing for cuts up to 10 percent.

"The problem is that the budget this year is in such a state that funding park rangers is going to be one line-item with a lot of other priorities that the state faces going forward," said Jim Evans, an aide to Sen. Darrell Steinberg, D-Sacramento, who chairs the Senate committee that oversees state parks.

"It's going to be difficult to add on to any program, including park rangers, this year."

Gail Sevrens, president of the California State Park Rangers Association, said the state is facing a shortage of rangers, in part, because their salary of \$40,000 to \$58,000 a year is lower than comparable law enforcement positions.

"Whenever you have a staffing presence, you have increased safety," Sevrens said. "So certainly, in my opinion, an increase would lead to more safety. People are stretched pretty thin out there."

In the last 20 years, she said, attendance at state parks has increased by about 30 percent and acreage has increased by 25 percent — but the number of rangers has only increased by about 3 percent.

## No extra staff

Yaroslavsky said that while county fire stations and many other agencies bring in more staff



A sheriff's car sits near the flash point of the recent Malibu fire. Officials believe it was caused by humans and swept down from a popular gathering spot at the top of Corral Canyon into the Malibu Bowl community.

Tina Burch/Staff Photographer

on standby when the Santa Anas whip up, the state agency responsible for thousands of acres of parkland has not been able to.

The supervisor said the state agency should boost coordination with other agencies on high-risk fire days. And he said policies surrounding campfires in designated areas should be revisited.

Campfires currently are banned in campgrounds on high wind days, and only camp stoves are allowed.

State park rangers say they've tried to minimize party spots by conducting regular cleanups, adding more trash cans in trailhead parking lots, ordering new signs, and patrolling whenever time allows.

## Neighbors' vigilance

Even more, state park rangers have relied on the vigilance of neighbors. A resident's complaint Aug. 5, for example, alerted rangers to a 3 a.m. after-hours gathering near the parking lot where Corral Canyon Road meets the Mesa Peak fire trail just north of Malibu Bowl — the community that bore the brunt of the weekend wildfires.

Park rangers — who generally only patrol until about 2 a.m. in the summer and midnight in the winter — cited eight people from Los Angeles for being in the park after-hours that day.

Two also were cited for alcohol violations, records show. There was no indication that a fire was involved in that case, according to the record of citations.

The agency decided against putting up a gate to bar after-hours access to the area because it would have cut off a turnaround area and

forced firetrucks or other vehicles to back down the road, state park official Schafer said.

In the last 12 months, park rangers have issued 12 citations in the eastern Malibu sector in that area, said Craig Sap, state parks public safety superintendent for the region.

None involved a fire violation and there were 440 citations in the last year in the entire sector, he said.

Grace White, an attorney who lives in Corral Canyon and nearly lost her home, said access to popular backcountry spots needs to be curtailed on high-wind days.

"This had to be started by someone from outside. ... If they're going to let people come in to camp, they've got to stop allowing it during the Santa Anas or at least patrol more often."

White also has lobbied the Malibu City Council to block campground expansion and she's threatened to sue the city if a wildfire results.

"Everyone in Malibu is very fire aware," she said. "You don't throw matches, I don't light my chimney and when the winds blow, nobody sleeps."

## Residents to speak out

Other Malibu residents were expected to speak Monday night at a Santa Monica Mountains Conservancy board in opposition to a proposal that would allow overnight camping in some canyon-area campgrounds.

But Conservancy Executive Director Joe Edmiston said the campgrounds would be closed on wind advisory days.

"There's no analogy to what happened (in the Corral Canyon

Fire)," Edmiston said.

The conservancy's 55,000 acres of open space are patrolled by 23 rangers — most of whom live in high-use canyons and parks.

The rangers are paid by the Mountains Recreation and Conservation Authority, a joint powers entity of which the conservancy is a member. A voter-approved county proposition and fees from events held at park facilities fund the entity.

Those rangers issued nearly 1,000 citations in the last 12 months during day and nighttime patrols, over half for violations of park hours. The conservancy's parks close at sunset.

Among the citations were 121 for smoking and seven for throwing a cigarette onto a roadway — the latter is a violation decided in Superior Court, according to conservancy records.

Edmiston said the agency currently has no ranger vacancies.

Abigail Bok, a member of the Calabasas Arson Watch team — one of several in the area that enlists 150 volunteers working with the Sheriff's Department to scan for fires and educate the public — said more state park rangers is at the top of the list of preventative measures.

She said encampments of the homeless in canyons and unauthorized camping are a constant concern for residents.

"Sure, (more rangers) would be helpful ... but citizens also need to keep their eyes and ears open to work in partnership."

Staff Writers Brent Hopkins and Harrison Sheppard contributed.

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# EXHIBIT DD

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December 6, 2007

Via Facsimile and US Mail

Michael Bergman, Esq.  
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Re: Superman/Superboy Litigations, Case Nos. 04-CV-8400, 8776 SGL (RZx)

Dear Michael and Anjani:

As we discussed on December 4, 2007, plaintiffs disagree with defendants' *assumption* that their financial rebuttal expert is entitled to sixty days to complete his report and that that defendants are necessarily entitled to take Steven Sills' deposition over eight months after the March 30, 2007 expert discovery cut-off, when the sole reason Mr. Sills supplemented his expert report on November 13, 2007 was *defendants'* concerted failure to provide Mr. Sills with the responsive financial documentation long ago requested by plaintiffs on Mr. Sills' advice.

Both these things are not a matter of defendants' rights, but rather constitute requested accommodations by plaintiffs. As mentioned, plaintiffs are willing to consider such accommodations, but in return want defendants to remedy outstanding issues regarding the remaining deficiencies in the information provided by defendants to Mr. Sills during his Court-ordered audit. Given the nature and scope of the parties' respective concerns, plaintiffs believe that these matters can and should be settled amicably without burdening the Court.

Regarding defendants' demand that their financial expert have over sixty days, until January 14, 2008, to serve a rebuttal report, such contravenes the 30 day rebuttal deadline prescribed by Federal Rule of Civil Procedure 26(a)(2)(C). *Moreover, the parties previously adhered to this 30 day rebuttal period for all other expert witnesses in the case.* Defendants' request also cuts against the Court's exhortation to deal with such expert reports "expeditiously," particularly in light of Michael Bergman's statements to me during our conversation on the morning of December 4, 2007 that such exhortation constitutes an enforceable order.

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Defendants' request for 60 days to fashion such a report is also odd considering they are well aware of the issues facing the parties' financial experts, namely the determination of all post-termination profits from Superman and Superboy works. Considering this information has always been within defendants' control, it makes no sense that defendants would be starting this analysis only now. In fact, as this financial accounting issue stands at the heart of these cases defendants could have submitted their own profit analysis during the initial exchange of expert reports in January, 2007. They certainly would not have needed a report from plaintiffs to make these calculations on their own. However, *defendants* chose not to do so.

Moreover, after consistently failing to provide Mr. Sills with the financial information long ago requested and thereafter being compelled to do so in a recent Court-ordered damages audit, defendants have at every turn harped on the looming trial and discovery deadlines to plaintiffs *and the Court* in an effort to curtail Mr. Sills' investigation and analysis. You will recall that when Mr. Sills requested a reasonable extension of the 30 day period to conduct a bi-coastal audit of Warner Bros. *and DC* regarding numerous Superman properties, defendants vigorously opposed such extension.

As to deposing Mr. Sills, Mr. Sills was designated by plaintiffs and submitted his initial expert report on January 12, 2007, well within the deadlines for same. Defendants should not be heard to complain that Mr. Sills' January 12, 2007 report was incomplete, as it is well documented (even in the report itself) that the sole reason for this was *defendants'* intentional failure to produce the requested financial documents clearly in their possession and relevant to plaintiffs' damages.

Notwithstanding defendants' stall tactics, Mr. Sills' January 12, 2007 report still carefully covered the limited financial documents that had been produced by defendants as of that date. Despite this, defendants chose not to submit a substantive rebuttal report of their own, nor to depose Mr. Sills by the March 30, 2007 expert discovery cut-off, essentially affirming both the scope as well as the absurdity of their discovery abuse. Defendants' consistent stonewalling and delay, necessitating multiple motions to compel culminated in Mr. Sills' court-ordered audit on August 13, 2007. This additional review produced a supplemental report from Mr. Sills served to defendants on November 13, 2007.

As to the defendants' contention that their position is supported by the Court, its September 17, 2007 Order makes no reference to the deposition of experts. There are only references in the transcript of the September 17, 2007 hearing as follows: during an extended soliloquy from Mr. Bergman (*Transcript of September 17, 2007 Hearing at 96:5-9*) that Judge Larson did not respond to, and at the very end of the hearing, when Mr. Perkins brought up the issue and the Court's only response was that "[y]ou should schedule those expeditiously." *Transcript of September 17, 2007 Hearing at 128:12-17.*

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Defendants' position is that offhand statement, made at the end of a hearing lasting several hours, somehow disposes of an issue that had neither been briefed by the parties nor placed before the Court as a contested issue. Plaintiffs respectfully disagree with that premise, especially as neither the Court's September 17, 2007 order, nor any of the multiple subsequently-filed stipulations regarding scheduling of this matter in which defendants fully participated, in any way reference or relate to expert reports or depositions.

Notwithstanding the above, plaintiffs would be willing to agree to the requested extension for defendants' rebuttal expert report and to the scheduling of expert depositions, even though they are not legally obligated to do so, if doing so would further more informed and constructive settlement negotiations. As we discussed this morning, for settlement discussions to have any meaning, both sides need to feel secure that they are analyzing the same financial information. Whereas our experts may disagree as to the interpretation of financial data, they should at least be disagreeing over the same set of data and documentation.

Currently, the gaps in defendants' production during Mr. Sills' audit – and consequently, in Mr. Sills report – continue to prevent Mr. Sills from fully analyzing the parties' respective positions. In order to rectify this situation, Plaintiffs require the following:

Percentage Charges: Plaintiffs require the basis and supporting documentation, if any, for the *percentages* used in the distribution fees, production cost overhead, and interest rates set forth as expenses within Warner Bros.' "ultimates." If Warner Bros. intends to establish such percentage-based fees as legitimate expenses to be charged against a project, plaintiffs need the basis for the percentage rates employed by Warner Bros. No *basis* for the rates (as opposed to the application of the rates to Warner Bros.' projected cash flow) was provided by Warner Bros. despite Mr. Sills' request for same during the audit period. As such, Mr. Sills cannot justify them as applied to, e.g., *Superman Returns*. Providing a basis for these percentages would allow for a much more productive assessment during settlement and at trial.

Audit Documents: Plaintiffs require the documents that defendants agreed to provide during the audit process, as well as any subsequently-created documents. As set forth in my letter of November 20, 2007, Mr. Sills requested during the audit process and Warner Bros. agreed to provide the following documents: the production cost detail or "bibles" for the post-termination *Smallville* episodes; Warner Bros.' June 30, 2007 statements to DC for *Superman Animated: Year 3*, *Justice League*, and *Krypto*; the June 30, 2007 third-party participation statements for *Superman Returns*, *Superman Animated: Year 3*, *Science of Superman*, *Legion of Superheroes*, *Superman Doomsday*, and *Superman II: Donner Cut*. Yet in Mr. Bergman's November 7, 2007 correspondence, he retracted and refused to provide such documents, stating that Warner Bros. would only provide

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documents generated on or before October 9, 2007, notwithstanding the fact that: (a) Warner Bros. agreed in the course of Mr. Sills' audit to provide such documents; and (b) defendants continuing obligation to supplement their document production under FRCP 26(e).

*DC Comics' Foreign/Domestic Revenues and Expenses:* Plaintiffs require the basis and supporting documentation, if any, for separating foreign and domestic revenue for the categories of Publishing, Retail Products, and Publishing Division – Media found in DC's financial statements. DC's "Blue Books" and "Green Books" either (a) do not distinguish between foreign and domestic revenues and expenses and/or (b) do not distinguish by title or property for these categories and, as such, Mr. Sills could not adequately distinguish between foreign and domestic profits. Given that defendants have argued both that "foreign" profits should be excluded and that plaintiffs' damages are limited to DC's United States' profits, it was incumbent upon defendants, as consistently requested, to provide plaintiffs with the reasonable ability to make the distinction between DC's foreign and domestic Superman revenues and expenses.

*DC Comics' Publishing Division – Media:* Mr. Sills and Plaintiffs requested but never received an answer, or any supporting documentation, as to whether DC's "Blue Books" for this category include WB's participation payments to DC for Superman properties. There are large discrepancies between the figures in DC's "Blue Books" and the figures in Warner's statements to DC, discrepancies that cannot be explained by reporting delays. Plaintiffs require that DC, as requested, confirm that the Blue Books for this category include or exclude WB's participation payments to DC and if included, that DC provide whatever documentation it has that reconciles the discrepancies between the two.

*DC Comics' Merchandising:* Mr. Sills and plaintiffs requested but never received an answer, or any supporting documentation, as to whether DC's "Blue Books" for this category include the revenues reflected in the Warner Bros. Consumer Products (WBCP) statements to DC for Superman merchandising. The figures in DC's "Blue Books" do not correlate to those found in the WBCP statements to DC. Plaintiffs require that DC, as requested, confirm that the Blue Books for this category include or exclude the revenues reported in WBCP's participation payments to DC and if included, that DC provide whatever documentation it has that reconciles the discrepancies between the two.

*DC Comics' General and Administrative Expenses:* As previously requested plaintiffs require an explanation, and any applicable supporting documentation, as to how these expenses are allocated on a title-by-title basis. These expenses, as reflected in DC's financial documents, are not separated or apportioned by title.

While not conceding to defendants' positions on these matters, if defendants are willing to timely address the issues listed above, plaintiffs are willing to grant defendants' expert

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additional time and to allow the late expert depositions to go forward, as it would ensure that the additional time and expense would be constructive and well-spent. Absent such good-faith efforts by defendants to address plaintiffs' legitimate concerns, plaintiffs can see no reason to concede these points.

As I indicated during our prior phone conversation, we remain willing to further discuss these issues with you in the hopes of professionally resolving them without the need for Court intervention.

Very truly yours,



Marc Toberoff

cc: James Weinberger, Esq.(via Facsimile)  
Patrick Perkins, Esq. (via Facsimile)

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<b>FROM:</b> Keith Adams	<b>PAGES ( including cover ):</b> 6
<b>DATE:</b> 12/6/2007	<b>RE:</b> <i>Siegel v. Time Warner Inc.</i>

### COMMENTS:

Please find the attached correspondence re: Expert Discovery

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