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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.

) **REPLY IN SUPPORT OF
 DEFENDANTS' EX PARTE
 APPLICATION TO SET
 REBUTTAL EXPERT REPORT
 DATE FOR JANUARY 14, 2008;
 DECLARATION OF MICHAEL
 BERGMAN**

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 28 AND RELATED COUNTERCLAIMS.

1 Defendants Time Warner Inc., Warner Communications Inc., Warner Bros.
2 Entertainment Inc., Warner Bros. Television Production Inc., and defendant and
3 counterclaimant DC Comics (collectively "Defendants"), respectfully submit this
4 reply in support of their *ex parte* application filed on December 6, 2007, which
5 asked this court to set a due date of January 14, 2008 for the report of defense
6 financial expert Franklin Johnson, rebutting the expert report of Plaintiffs'
7 auditor, Steven Sills.

8 As an initial matter, Plaintiffs filed and served their opposition two court
9 days (four calendar days) after Defendants served their application, making the
10 opposition untimely under paragraph 6 of this Court's Standing Order. As such,
11 Plaintiffs' opposition should be disregarded. If the Court does consider the
12 content of the opposition, however, there are several inaccuracies and
13 misstatements that need to be corrected.

14 First, although Plaintiffs eventually concede that Defendants agreed to
15 enter into a stipulation continuing the trial and pretrial dates to accommodate Mr.
16 Toberoff's misfortunate house fire, Plaintiffs have misrepresented Defendants'
17 position in an attempt to color Defendants as the "bad guy." Contrary to
18 Plaintiffs' assertion, Defendants never made their agreement to a stipulation
19 continuing the trial date contingent on Plaintiffs agreeing to Defendants'
20 proposed expert discovery deadlines. (*See* Bergman Decl. ¶¶ 2-4.) Rather,
21 Defendants proposed that the parties include the expert discovery deadlines in the
22 stipulation so that the other pre-trial dates would be spaced out in a workable and
23 meaningful way. Of most concern was the mediation completion date;
24 Defendants believe that both experts should be deposed prior to the mediation to
25 provide the parties with a reasonable universe of potential damages that they can
26 discuss during the mediation.

27 For this reason, when Mr. Toberoff sent Defendants a draft stipulation that
28 omitted those expert discovery deadlines, Defendants called and proposed expert

1 discovery deadlines that would fit within the dates Plaintiffs had proposed. Once
2 Defendants understood that Plaintiffs would not agree to include any expert
3 discovery deadlines in the stipulation, Defendants agreed to enter into a
4 stipulation excluding those dates and informed Mr. Toberoff that Defendants
5 would be filing an *ex parte* application regarding the expert discovery deadlines.

6 Second, regardless of how Plaintiffs now characterize Mr. Sills' initial
7 expert report, a plain reading of the conclusion of the document, which is
8 attached as Exhibit A to the Bergman Declaration, demonstrates that it was
9 simply a "placeholder" report devoid of any substantive conclusions. The only
10 conclusion reached in Mr. Sills initial report was that he could not reach any
11 substantive opinions because Defendants allegedly did not furnish the necessary
12 information. There was, in short, nothing to rebut and in his initial rebuttal
13 report, timely served on February 9, 2007,¹ Mr. Johnson was limited to stating
14 that if and when Mr. Sills reached any opinions or asserted any claims he would
15 provide a substantive response. Thus, Defendants are certainly entitled to submit
16 a supplemental rebuttal report in response to Mr. Sills' supplemental report² and
17 there is no reason they should not also be permitted to depose him regarding the
18 content of that supplemental report.

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21 ¹ If, as Plaintiffs argue, there is no issue as to the timing of Mr. Sills' supplemental
22 expert report because he already timely submitted an initial expert report in January
2007, then the same holds true for Mr. Johnson, who timely submitted his initial
rebuttal report in February 2007.

23 ² Any argument that Defendants should have submitted an initial expert report on this
24 topic, although without merit, is not proper for consideration without providing
25 Defendants the opportunity to fully brief the issue. The sole issue presented in
26 Defendants' application is the timing of Defendants' rebuttal expert report. As an
27 aside, however, although Defendants certainly have control over their own financial
28 documents, Mr. Johnson could not have submitted a report of his own without first
receiving a report containing Mr. Sills' substantive conclusions. After all, Plaintiffs,
not Defendants, have the burden of establishing the profits they are entitled to share in,
if any, as co-owners of any claimed Superman-related properties. Plaintiffs' stance
would put Defendant's expert Mr. Johnson in the untenable position of guessing about
what profits Mr. Sills would claim for which particular properties. Mr. Johnson will
submit a proper rebuttal report critiquing Mr. Sills' approach and submitting an
independent calculation regarding the profits Mr. Sills claims in his report.

1 Finally, the arguments presented in Section III of Plaintiffs' Opposition
2 (pages 11 through 17) should be disregarded as an improper attempt to reopen the
3 audit that the Court ordered completed by October 9, 2007, an improper motion
4 to reconsider portions of the Court's October 23, 2007 Order denying Plaintiffs'
5 October 4, 2007 *Ex Parte* Application, and an improper argument of unrelated
6 issues in an opposition. If Plaintiffs had an issue with the way Defendants
7 responded to any requests Mr. Sills made during the audit, they should have
8 moved at the time. Having done nothing at the time, Plaintiffs now present these
9 arguments for the first time in the context of this opposition to Defendants'
10 unrelated *ex parte* application addressing the timing of Mr. Johnson's rebuttal
11 report. Plaintiffs are free to submit their own separate *ex parte* application
12 addressing the audit issues if they so choose. It is entirely improper, however, to
13 seek a ruling on those issues in the context of their opposition to Defendants' *ex*
14 *parte* application: the *only* relation those issues have to Defendants' present
15 application is that Plaintiffs attempted to barter them as a proposed compromise
16 to Defendants' request to set the rebuttal report deadline for January 14, 2008.

17 As set forth in Defendants' application, the proposed January 14 deadline
18 is appropriate given the scope of Mr. Sills' report and the fact that it contains
19 alleged revenue numbers that cannot readily be reconciled with what Defendants'
20 expert has been able to determine from Defendants' books and records.
21 Submission of the rebuttal report on the proposed date will provide Defendants'
22 expert with a reasonable amount of time to adequately analyze the underlying
23 materials purportedly supporting Mr. Sills' conclusions and prepare a proper
24 rebuttal to those conclusions. It will also allow more than sufficient time for
25 expert depositions – even under the present trial schedule – and therefore will not
26 prejudice Plaintiffs in any respect.

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1 For the foregoing reasons, and the reasons presented in Defendants' *ex*
2 *parte* application, Defendants respectfully request that the Court set January 14,
3 2008 as the due date of Mr. Johnson's rebuttal report.

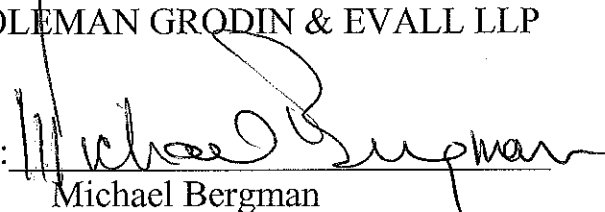
4 Respectfully submitted,

5 DATED: December 11, 2007 FROSS ZELNICK LEHRMAN & ZISSU, P.C.

6 PERKINS LAW OFFICE, P.C

7
8 -and-

9 WEISSMANN WOLFF BERGMAN
10 COLEMAN GRODIN & EVALL LLP

11
12 By: 
13 Michael Bergman
14 *Attorneys for Defendants and Counterclaimant*

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DECLARATION OF MICHAEL BERGMAN

I, Michael Bergman, declare as follows:

1. I am a member of Weissmann Wolff Bergman Coleman Grodin & Evall, LLP, one of the attorneys of record for defendants Time Warner Inc., Warner Communications Inc., Warner Bros. Entertainment Inc., Warner Bros. Television Production Inc., and defendant and counterclaimant DC Comics (collectively "Defendants") in this matter. I make this Declaration in support of Defendants' Reply in Support of Defendants' Ex Parte Application to Set Rebuttal Expert Report Date for January 14, 2008. The facts set forth below are within my personal knowledge, and if called as a witness I could and would testify competently thereto.

2. On November 26, 2007 I spoke with Mr. Toberoff, who informed me that his home had burned down in the Malibu fires over the weekend and requested that Defendants stipulate to continuing the trial for six weeks due to that misfortune. I informed Mr. Toberoff that Defendants would of course be agreeable under these circumstances to such a stipulation and asked that he send us a draft stipulation that included a proposed pre-trial schedule including dates for expert discovery.

3. Mr. Toberoff sent me a proposed schedule on November 28, 2007 that did not include expert discovery dates. Accordingly, I asked my associate Adam Hagen to call Mr. Toberoff's associate Mr. Williamson to propose dates for expert discovery and a mediation date that would allow the parties to complete expert discovery prior to the mediation. Mr. Hagen spoke with Mr. Williamson on November 29, 2007, who indicated that he would call Mr. Hagen back after discussing those proposed dates with Mr. Toberoff.

4. After not hearing back from either Mr. Williamson or Mr. Toberoff, Mr. Hagen left Mr. Williamson a message on December 3, 2007. On December 4, 2007, Mr. Toberoff called my partner Anjani Mandavia and informed her that

1 Plaintiffs opposed including expert discovery dates in the stipulation. He told her
2 that Plaintiffs would not be willing to agree to Defendants' proposed dates unless
3 Defendants agreed to provide Plaintiffs with explanations for and/or produce
4 certain financial information.

5 I declare under penalty of perjury that the foregoing is true and correct and
6 that I executed this Declaration this 11th day of December, 2007 at Beverly Hills,
7 California.

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10 MICHAEL BERGMAN

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