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5 Attorneys for Plaintiffs and Counterclaim Defendants
 6 Joanne Siegel and Laura Siegel Larson

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

9 JOANNE SIEGEL, an individual; and
 10 LAURA SIEGEL LARSON, an
 11 individual,

12 Plaintiffs,

13 vs.

14 WARNER BROS.
 15 ENTERTAINMENT INC., a
 16 corporation; TIME WARNER INC., a
 17 corporation; DC COMICS, a general
 partnership; and DOES 1-10,

18 Defendants

19
 20 DC COMICS,

21 Counterclaimant

22 vs.

23
 24 JOANNE SIEGEL, an individual; and
 25 LAURA SIEGEL LARSON, an
 individual,

26 Counterclaim Defendants.
 27
 28

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

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

**PLAINTIFFS' OBJECTION TO
 REPLY IN SUPPORT OF
 DEFENDANTS' EX PARTE
 APPLICATION TO SET
 REBUTTAL EXPERT REPORT
 DATE FOR JANUARY 14, 2008;
 DECLARATION OF NICHOLAS C.
 WILLIAMSON IN SUPPORT
 THEREOF**

1 Plaintiffs Joanne Siegel and Laura Siegel Larson hereby object to the
2 Reply in Support of Defendants' *Ex Parte* Application to Set Rebuttal Expert
3 Report Date for February 14, 2008, filed on December 11, 2007 ("*Ex Parte*
4 Reply"). The *Ex Parte* Reply was purportedly in reply to Plaintiffs' Opposition
5 to Defendants' *Ex Parte* Application, filed on December 10, 2007. To begin
6 with, no Local Rule or Federal Rule of Civil Procedure permits the filing of a
7 reply to an *ex parte* application. Section 6 of Judge Larson's Standing Order, in
8 particular, refers to "moving, opposition, or notice of non-opposition" papers,
9 but makes no reference to the filing of any reply papers. Finally, the filing of a
10 reply works against the purposes of *ex parte* applications, which necessarily
11 involve a shortened time for the preparation of opposition papers and typically
12 (as in this case) involve a shortened time for the Court to render its decision. To
13 permit a reply in an *ex parte* application, would advantage a party that ignores
14 the local rules.

15 Defendants' improper reply nonetheless requires a response. Plaintiffs
16 timely filed and served their *ex parte* opposition, as General Order No. 07-08
17 establishes that electronically-filed documents are deemed served as of the
18 issuance of the Notice of Electronic filing, which occurred at 12:06 a.m. on
19 Friday, December 7, 2007, and the Court's clerk confirmed that any opposition
20 to the *ex parte* would be due by 12:00 p.m. on Monday, December 10, 2007.
21 Plaintiffs' opposition was duly filed by that time. *See* Declaration of Nicholas
22 C. Williamson In Opposition To Defendants' Ex Parte Application To Set
23 Rebuttal Expert Report Date For January 14, 2008 ("Williamson Decl."), at ¶¶
24 5-7, Exhibits A-B.

25 Defendants' contention that they did not condition their agreement to a
26 trial continuance on Plaintiffs' agreement to the extension of the time for their
27 expert to complete his rebuttal report and on Mr. Sills' deposition is completely
28 false and disingenuous. During the December 4, 2007, conversation between

1 Mr. Toberoff and Mr. Bergman, Mr. Bergman *repeatedly* refused to agree to an
2 extension unless these discovery concessions were included. *See* Williamson
3 Decl., ¶ 2. When it became clear that Defendants would not succeed in
4 leveraging Plaintiffs’ counsel’s misfortune, Defendants subsequently caved and
5 agreed to a continuance. *See* Declaration Of Marc Toberoff In Opposition To
6 Defendants’ Ex Parte Application To Set Rebuttal Expert Report Date For
7 January 14, 2008 (“Toberoff Decl.”), ¶ 37; Williamson Decl., ¶ 3.

8 Defendants’ contention that Mr. Sills’ initial report “was simply a
9 ‘placeholder’ report devoid of any substantive conclusions” is manifestly at odds
10 with the report itself. In the report, Mr. Sills repeatedly drew conclusions based
11 on the documentation provided to that point by Defendants. *See* Toberoff Decl.,
12 Ex. B, at p. 3 [setting forth documents provided], 4-10 [setting forth analysis of
13 such documents], and 10 [quoted portion]. Defendants should not now be heard
14 to complain or demand discovery concessions based on Mr. Sills’ original or
15 supplemental expert report, when any incompleteness in Mr. Sills’ expert report
16 was *solely* caused by Defendants’ intentional stonewalling – the subject of
17 Plaintiffs’ numerous motions to compel.

18 Lastly, the reason that Plaintiffs addressed in their opposition the
19 remaining gaps in the financial documentation provided by Defendants was
20 because these issues are intimately tied to the expert discovery deadlines
21 addressed by Defendants’ application. For instance, Plaintiffs are entitled to
22 receive Defendants’ missing financial documentation *prior to* the deposition of
23 Defendants’ financial expert. Given that Defendants’ application raised issues
24 of expert discovery regarding damages with an eye to the parties’ upcoming
25 settlement mediation, it would be proper and constructive for the Court to
26 address remaining expert issues together.

1 Dated: December 11, 2007

LAW OFFICES OF MARC TOBEROFF, PLC

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By: _____/s/_____

Marc Toberoff

Attorneys for Plaintiffs and Counterclaim
Defendants Joanne Siegel and Laura Siegel
Larson

1 **DECLARATION OF NICHOLAS C. WILLIAMSON**

2 I, Nicholas Williamson, declare as follows:

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

10 2. On December 4, 2007, Mr. Toberoff and I met-and-conferred
11 telephonically with Defendants’ counsel Michael Bergman and Anjani
12 Mandavia regarding a six-week continuance of the trial schedule due to the
13 misfortune of Mr. Toberoff’s home burning down. I took detailed notes of this
14 conference. During this conversation, and in response to a direct question from
15 Mr. Toberoff, Mr. Bergman *expressly conditioned* Defendants’ assent to the
16 requested continuance on Plaintiffs agreeing to an extension for Defendants’
17 financial expert to serve his rebuttal report and to a subsequent deposition of
18 Plaintiffs’ expert, Steven Sills. Mr. Toberoff objected that these were separate
19 issues that could be worked out, but that it was improper for Defendants to tie
20 discovery demands to a continuance based on personal disaster. Mr. Bergman
21 indicated that if Plaintiffs did not agree to his discovery demands, Plaintiffs
22 would need to move *ex parte* for a continuance.

23 3. Later that day, Anjani Mandavia informed Mr. Toberoff by
24 telephone that Defendants had reconsidered and would stipulate to a trial
25 continuance, but would apply *ex parte* as to their expert’s rebuttal report.

26 4. I attended the deposition of third party Bryan Singer on Thursday,
27 December 6, 2007. In attendance at that deposition were Defendants’ counsel
28 Michael Bergman and Adam Hagen. At no time during the seven hours of Mr.

1 Singer's deposition did Defendants' counsel inform me or plaintiffs' counsel
2 Marc Toberoff that they had filed electronically an *ex parte* application that
3 same day. Defendants also did not serve Plaintiffs with a hard copy that day.

4 5. Plaintiffs were solely served electronically with Defendants'
5 Application to Set Rebuttal Expert Report Date at 12:06 a.m. on Friday,
6 December 7, 2007. Attached hereto as Exhibit A is a true and correct copy of
7 the electronic notice from the Court's ECF website I received at 12:06 a.m. on
8 Friday, December 7.

9 6. Upon receiving this notice on my arrival into the office on the
10 morning of Friday, December 7, 2007, I called the Court's clerk, James Holmes,
11 to notify the Court that Plaintiffs would be opposing Defendants' *ex parte*
12 application and to clarify when Plaintiffs' opposition would be due, since
13 Plaintiffs had received notice only that morning. Mr. Holmes placed me on
14 hold, and upon returning to the line, informed me that, after consulting with the
15 law clerk, Plaintiffs' opposition would need to be filed electronically by 12:00
16 p.m. on Monday, December 10, 2007.

17 7. Both Plaintiffs' opposition to Defendants' *ex parte* application and
18 the declaration in support thereof were filed by 12:00 p.m. on December 10,
19 2007. Attached hereto as Exhibit B are true and correct copies of the
20 confirmation pages for these filings.

21
22 I declare under penalty of perjury of the laws of the United States of
23 America that the foregoing is true and correct.

24 Executed on December 11, 2007 in Los Angeles, California.

25
26 /_____/s/_____/_____
27 Nicholas C. Williamson
28

EXHIBIT A

Nicholas Williamson

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Friday, December 07, 2007 12:06 AM
To: ecfnef@cacd.uscourts.gov
Subject: Summary of ECF Activity

Activity has occurred in the following cases:

[2:04-cv-08400-SGL-RZ Joanne Siegel et al v. Warner Bros Entertainment Inc et al](#)
Order [278](#)

Docket Text:

ORDER by Judge Stephen G. Larson re Stipulation to Reschedule Deposition of 3rd party Bryan Singer [277]. IT IS HEREBY ORDERED that the deposition of Bryan Singer shall be held on 12/6/07, commencing promptly at 12:30 pm. (mrgo)

[2:04-cv-08400-SGL-RZ Joanne Siegel et al v. Warner Bros Entertainment Inc et al](#)
Ex Parte Application for Order [279](#)

Docket Text:

EX PARTE APPLICATION for Order for Setting Rebuttal Expert Report Date for January 14, 2008; Declaration of Franklin Johnson; Declaration of Anjani Mandavia; Declaration of Michael Bergman filed by Defendants Warner Bros Entertainment Inc, Time Warner Inc, DC Comics. (Attachments: # (1) Exhibit to Michael Bergman's Declaration)(Mandavia, Anjani)

EXHIBIT B

Responses, Replies and Other Motion Related Documents

2:04-cv-08400-SGL-RZ Joanne Siegel et al v. Warner Bros Entertainment Inc et al
(RZx), AO279, DISCOVERY, PROTORD

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Toberoff, Marc on 12/10/2007 at 11:46 AM PST and filed on 12/10/2007

Case Name: Joanne Siegel et al v. Warner Bros Entertainment Inc et al
Case Number: 2:04-cv-8400
Filer: Laura Siegel Larson
Document Number: 280

Docket Text:

MEMORANDUM in Opposition to EX PARTE APPLICATION for Order for Setting Rebuttal Expert Report Date for January 14, 2008; Declaration of Franklin Johnson; Declaration of Anjani Mandavia; Declaration of Michael Bergman[279] filed by Plaintiff Laura Siegel Larson. (Toberoff, Marc)

2:04-cv-8400 Notice has been electronically mailed to:

- Michael Bergman mbergman@wwllp.com
- David L Burg david.burg@nbcuni.com
- Christopher G Caldwell caldwell@caldwell-leslie.com
- David Aaron Grossman dgrossman@loeb.com
- Anjani Mandavia amandavia@wwllp.com
- Michael Dietz Roth roth@caldwell-leslie.com
- Marc Toberoff mtoberoff@ipwla.com
- James D Weinberger jweinberger@frosszelnick.com
- Nicholas Calvin Williamson nwilliamson@ipwla.com
- Roger L Zissu rzissu@frosszelnick.com

2:04-cv-8400 Notice has been delivered by First Class U. S. Mail or by fax to :

Justin Deabler
Fross Zelnick Lehrman and Zissu

866 United Nations Plaza
New York, NY 10017

Patrick T Perkins
Perkins Law Office
1711 Route 9D
Cold Springs, NY 10516

Jonathan Zavin
Loeb & Loeb
345 Park Avenue
New York, NY 10154-0037

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Documents and Settings\NWilliamson\My Documents\Siegel v. Time Warner.Ex Parte.Opp.12.10.07.FINAL.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=12/10/2007] [FileNumber=5055948-0
] [221928d5edde71709a611bf42ef391d2b8b10c471c860561ab9165f06dc171ffdf4
930b864d10d6390546ba9466128d783226593329d9e7b2e23cf943eb1ea75]]

Responses, Replies and Other Motion Related Documents

2:04-cv-08400-SGL-RZ Joanne Siegel et al v. Warner Bros Entertainment Inc et al
(RZx), AO279, DISCOVERY, PROTORD

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Toberoff, Marc on 12/10/2007 at 12:00 PM PST and filed on 12/10/2007

Case Name: Joanne Siegel et al v. Warner Bros Entertainment Inc et al

Case Number: 2:04-cv-8400

Filer: Laura Siegel Larson

Document Number: 281

Docket Text:

DECLARATION of Marc Toberoff, Esq. in opposition to Defendants' Ex Parte Application EX PARTE APPLICATION for Order for Setting Rebuttal Expert Report Date for January 14, 2008; Declaration of Franklin Johnson; Declaration of Anjani Mandavia; Declaration of Michael Bergman[279] filed by Plaintiff Laura Siegel Larson. (Attachments: # (1) Exhibit Exhibits A-P# (2) Exhibit Exhibits Q-DD) (Toberoff, Marc)

2:04-cv-8400 Notice has been electronically mailed to:

Michael Bergman mbergman@wwllp.com

David L Burg david.burg@nbcuni.com

Christopher G Caldwell caldwell@caldwell-leslie.com

David Aaron Grossman dgrossman@loeb.com

Anjani Mandavia amandavia@wwllp.com

Michael Dietz Roth roth@caldwell-leslie.com

Marc Toberoff mtoberoff@ipwla.com

James D Weinberger jweinberger@frosszelnick.com

Nicholas Calvin Williamson nwilliamson@ipwla.com

Roger L Zissu rzissu@frosszelnick.com

2:04-cv-8400 Notice has been delivered by First Class U. S. Mail or by fax to :

Justin Deabler
Fross Zelnick Lehrman and Zissu
866 United Nations Plaza
New York, NY 10017

Patrick T Perkins
Perkins Law Office
1711 Route 9D
Cold Springs, NY 10516

Jonathan Zavin
Loeb & Loeb
345 Park Avenue
New York, NY 10154-0037

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Documents and Settings\NWilliamson\My Documents\Siegel v. Time Warner.Ex Parte Opp.MT Decl.12.10.07.FINAL.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=12/10/2007] [FileNumber=5056167-0] [9cb38ff936e563e83c5da024ac35c66dfc1146fe1a4907e97819d5174ea46c8647e96c042d726d9d6d9ace40016c5c455f571089327d9742a6b1cc1d2cf799b9]]

Document description:Exhibit Exhibits A-P

Original filename:C:\Documents and Settings\NWilliamson\My Documents\Siegel v. Time Warner.Ex Parte.Opp.MT Decl.Part 1.Exhibits A-P.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=12/10/2007] [FileNumber=5056167-1] [b4791559a18c109c7aa890acd35c5776ebe81cbadc6227696676ab3263f3d239ac90fc666080199c6a39634965ab8f4b112d97daa870b3926f55d57c5436fec2]]

Document description:Exhibit Exhibits Q-DD

Original filename:C:\Documents and Settings\NWilliamson\My Documents\Siegel v. Time Warner.Ex Parte. Opp. MT.Decl.Part 2.Exhibits Q-DD.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=12/10/2007] [FileNumber=5056167-2] [515274fbbaf62e03ee73a754543ab9c9737ecc4beb4eea7b4b12158dc1c3d20e6f214f5973ba0fea4113e76c8fae72c7e6fd7f0af47b5437c07841a24d0fbd33]]