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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 JOANNE SIEGEL and LAURA
 SIEGEL LARSON,
 17 Plaintiffs,
 18 vs.
 19 WARNER BROS. ENTERTAINMENT
 INC.; TIME WARNER INC.; DC
 COMICS; and DOES 1-10,
 20 Defendants.

21 JOANNE SIEGEL and LAURA
 SIEGEL LARSON,
 22 Plaintiffs,
 vs.
 23 TIME WARNER INC.; WARNER
 COMMUNICATIONS INC.; WARNER
 24 BROS. ENTERTAINMENT INC.;
 WARNER BROS. TELEVISION
 25 PRODUCTION INC.; DC COMICS;
 and DOES 1-10,
 26 Defendants.

27 **AND RELATED COUNTERCLAIMS**

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.

**SUPPLEMENTAL DECLARATION
 OF WAYNE M. SMITH IN SUPPORT
 OF DEFENDANTS' DECLARATION
 FILED PURSUANT TO THE
 COURT'S SEPTEMBER 17, 2007
 ORDER RE "ESCROW
 DOCUMENTS"**

**DISCOVERY MATTER
 LOCAL RULE 37**

Time: N/A
 Date: N/A
 Courtroom: 2
 Hon. Stephen G. Larson
 Discovery Cutoff: Nov. 17, 2006

1 I, Wayne M. Smith, declare and state as follows:

2 1. I am an attorney, admitted to practice before the Supreme Court of the
3 State of California and before this Court, and am employed by defendant Warner
4 Bros. Entertainment Inc. ("Warner Bros.") as Vice President, Senior Litigation and
5 Chief Patent Counsel. I submit this Supplemental Declaration in Support of
6 Defendants' Declaration filed pursuant to the Court's September 17, 2007 Order re
7 "Escrow Documents". I have personal knowledge of the facts contained within this
8 declaration, and, if called upon as a witness, I could and would testify competently
9 thereto.

10 2. This declaration is submitted based on additional information that has
11 recently come to light in view of proceedings in this case before the United States
12 District Court for the Northern District of Ohio (the "Ohio Proceedings"), which
13 bears on declarations I submitted before this court on March 26, 2007 and April 2,
14 2007. The Ohio Proceedings involve documents that plaintiffs' counsel, Marc
15 Toberoff, has asserted are covered by an alleged joint attorney-client privilege held
16 between the plaintiffs and Michael Siegel (deceased), the half-brother of plaintiff
17 Laura Siegel Larson.

18 3. As detailed in my declaration of March 26, 2007, after Warner Bros.
19 received what appeared to be three identical sets of the Escrow Documents, I
20 performed a review of one of those sets under the standards set forth in the *State*
21 *Fund* case, and divided the documents into three separate groups: "privileged," "not
22 privileged" and "?". (March 26, 2007 Smith Decl. re Whistleblower Documents, ¶¶
23 7-12.) This divided set of documents was then turned over to John Quinn at Arnold
24 & Porter along with the two other sets. Arnold & Porter subsequently numbered
25 those documents Q0001-Q0839 and provided a copy to Mr. Toberoff. (*Id.* at ¶ 13.)
26 Neither Warner nor its counsel has a copy of the documents. (*Id.*)

27 4. From reviewing Marc Toberoff's May 21, 2007 declaration, it is clear
28 that documents nos. Q0001-Q0289 are the documents that I reviewed and divided

1 into three groups. This is evident from the fact that the two other sets of documents
 2 (Q0290-Q0561 and Q0562-Q0839), each of which begins with the “un-dated
 3 defamatory cover letter” document, are in nearly identical order to each other, but
 4 not Q0001-Q0289. This is also evident from the fact that nearly all of the
 5 documents that Mr. Toberoff identified as having been already produced in
 6 discovery are grouped together in a single run of documents from Q0011-Q0086 –
 7 these are plainly the documents that I identified and placed in the second, i.e., “non-
 8 privileged,” group when I conducted my review.

9 5. Prior to the Ohio Court’s April 1, 2008 Order, in the run of documents
 10 from Q0011-Q0086, four had not been produced to plaintiffs. Three of these
 11 documents – corresponding to Bulson Privilege Log nos. 319, 327 and 328 – have
 12 been found to be not privileged, were ordered produced by the Ohio Court and have
 13 now been produced. I also grouped these documents among those that were “non-
 14 privileged” when I conducted my review under *State Fund* in June 2006.

15 6. There is only one remaining as yet unproduced document among the
 16 “non-privileged” run of documents: document no. Q0027-33. In Mr. Toberoff’s
 17 May 21, 2007 declaration, this document is represented to correspond to “Plaintiff’s
 18 Supplemental Privilege Log #82,” which provides:

19 Log#	Date	Identity of Recipient(s)	Identity of Author(s)	Document Description	Privilege Claim	Present Location
20 82	7/11/2003	Atty Marc Toberoff	Laura Siegel	Facsimile	Atty/Client	Plaintiff’s Counsel

21
 22 Based on the manner in which I reviewed the documents in June 2006, I would not
 23 have placed a communication between Mr. Toberoff and Ms. Siegel within the
 24 group of “non-privileged” documents.

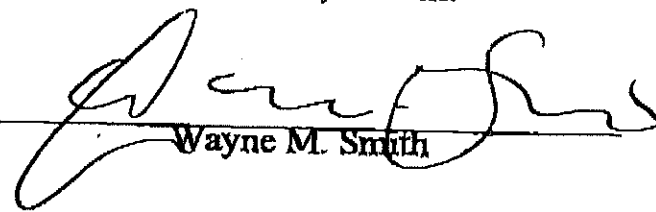
25 7. Based on the information recently discovered from the Ohio
 26 Proceedings, I believe this document must be the “missing” letter from Laura Siegel
 27 to Michael Siegel discussed in my April 2, 2007 Declaration, possibly preceded by a
 28 facsimile transmission page from Ms. Siegel to Mr. Toberoff. To the best of my

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recollection, this letter was directed to the same general subject matter as the recently disclosed Bulson documents – the sale of Michael Siegel’s Superman interest to Mr. Toberoff’s “investor.” According to Plaintiff’s Supplemental Privilege Log, this letter is dated July 11, 2003 – following Don Bulson’s rejection of Mr. Toberoff’s offer on June 18, 2003 (Bulson privilege log no. 319), and five days prior to Mr. Toberoff’s response on July 16, 2003. Thus, in terms of timing, sequence and subject matter, this as yet unproduced document fits with the other correspondence with Michael Siegel’s representative that was improperly withheld, but which has now been produced following the Ohio Order.

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

Dated this 9th day of April, 2008 at Honolulu, Hawaii.


Wayne M. Smith