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 10 JOANNE SIEGEL and LAURA SIEGEL LARSON

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA- EASTERN DIVISION**

13 JOANNE SIEGEL, an individual; and
 14 LAURA SIEGEL LARSON, an
 15 individual,
 16 Plaintiffs,

17 vs.

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

24 DC COMICS,

25 Counterclaimant,

26 vs.

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

Counterclaim Defendants.

Case No. CV 04-8400 SGL (RZx)

[Consolidated for Discovery with
 Case No. 04-8776 SGL (RZx)]

Honorable Stephen G. Larson, U.S.D.J.
 Honorable Ralph Zarefsky, U.S.M.J.

**PLAINTIFFS JOANNE SIEGEL
 AND LAURA SIEGEL LARSON'S
 OBJECTION TO DEFENDANTS'
 NOTICE OF NEW EVIDENCE
 RE: DEFENDANTS'
 DECLARATION FILED
 PURSUANT TO THE COURT'S
 SEPTEMBER 17, 2007 ORDER
 RE: "ESCROW DOCUMENTS"**

[Complaint filed: October 8, 2004]

**DISCOVERY MATTER
 LOCAL RULE 37**

1 Plaintiffs Joanne Siegel and Laura Siegel Larson (“Plaintiffs”) hereby
2 object to the purported Notice of New Evidence (“Notice”) filed by Defendants
3 on April 9, 2008, which is a thinly veiled and unauthorized brief or motion
4 regarding the disputed documents stolen from the legal files of Plaintiffs’
5 counsel (the “Escrow Documents”). The Notice is highly objectionable for
6 several reasons. Firstly, Defendants have ignored all procedural formalities
7 regarding this filing: they did not meet and confer regarding their putative
8 motion pursuant to L.R. 7-3, nor did they respect the Court’s December 12, 2007
9 order forbidding such *ex parte* applications under penalty of sanctions.

10 The Court clearly ordered that with respect to any further discovery issues
11 or briefing that the parties submit a “singular document (a ‘Joint Stipulation’)
12 submitted to the Court containing both sides respective positions.” *See*
13 Declaration of Marc Toberoff Filed in Support of Plaintiffs’ Objection to Notice
14 of New Evidence (“Toberoff Decl.”), Ex. A. Moreover, in two letters dated
15 April 4, 2008, Plaintiffs reminded Defendants of this obligation and demanded
16 that any briefing to the Court regarding Judge Solomon Oliver Jr.’s April 1,
17 2008 decision in the U.S. District Court for the Northern District of Ohio be in
18 the form of a joint stipulation or a notice in which both parties could reasonably
19 set forth their respective positions, not by way of an *ex parte* communication.¹
20 *See* Toberoff Decl., Exs. B, C. Defendants have obviously chosen to flout the
21 Court’s order, and the Local Rules. *See* Toberoff Decl., Ex. E.

22
23 ¹ In fact, the first time Plaintiffs were made aware of the possibility of this filing was through an e-mail
24 communication forwarded from Defendants’ counsel Adam Hagen on April 4, 2008, regarding communications
25 between himself and Court Clerk James Holmes on March 28, 2008. Toberoff Decl., Ex. D. While
26 communications with the court clerk are not improper *per se*, the substance of this communication clearly drifted
27 beyond the typical subject matter: Mr. Hagen was seeking to communicate with the Court regarding alterations
28 to the Court’s March 26, 2008 summary judgment order, without either advising Plaintiffs’ counsel that such
contact was occurring or giving plaintiffs’ counsel any notice or opportunity to participate or respond until more
than a week after the fact. Moreover, with respect to the non-typographical alterations suggested for the Court’s
order, Mr. Hagen’s e-mail failed to point to any evidence of the accuracy of the proposed corrections *in the*
record, instead implying that the Court should rely on off-the-record and *ex parte* out-of-Court suggestions by
defense counsel.

1 Secondly, the Notice far exceeds the scope of such a filing by using
2 misleading statements and sweeping generalizations to argue for greatly
3 expanding the contours of Judge Oliver Jr.'s ruling, which *denied* Defendants'
4 motion regarding the privilege log of Don Bulson, Esq., the attorney of third
5 party Michael Siegel (now deceased), with the sole exception of fifteen (15)
6 specific communications, of which all but one were between Plaintiffs' counsel
7 and Mr. Bulson. For example, on the basis of that limited ruling, Defendants are
8 asking that "all remaining communications with Michael Siegel for which
9 privilege has been claimed should be immediately produced." Notice at 5:1-2.
10 This broad reading, unsupported by any authority, is absurd and further
11 highlights the sanctionable nature of Defendants' *ex parte* communication and
12 why Plaintiffs must be afforded a full opportunity to respond to Defendants'
13 Notice.

14 Accordingly, Plaintiffs respectfully request that they be given a
15 reasonable amount of time to respond to Defendants' Notice. Given that
16 Defendants filed their Notice on April 9, 2008, eight (8) days after Judge Oliver
17 issued his ruling and five (5) days after their communication to Plaintiffs'
18 counsel of their intent to file a "Notice" of unidentified scope and substance,
19 Plaintiffs request that the Court give Plaintiffs at least seven (7) days, until April
20 16, 2008, to oppose Defendants' Notice on the merits.

21 DATED: April 10, 2008

LAW OFFICES OF MARC TOBEROFF, PLC

22
23 /s/

Marc Toberoff

24 Attorneys for Plaintiffs JOANNE SIEGEL
25 and LAURA SIEGEL LARSON