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9 Attorneys for Plaintiffs and Counterclaim Defendants
 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 Case No.: CV 04-08400 SGL (RZx)
 19 [Consolidated for Discovery with
 20 Case No. 04-8776 SGL (RZx)]

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

23 TIME WARNER INC., a corporation;
 24 WARNER COMMUNICATIONS
 25 INC., a corporation; WARNER
 26 BROS. ENTERTAINMENT INC., a
 27 corporation; WARNER BROS.
 28 TELEVISION PRODUCTION INC.,
 a corporation; DC COMICS, a general
 partnership; and DOES 1-10,
 Defendants.

**DECLARATION OF MARC
 TOBEROFF FILED IN SUPPORT
 OF 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"**

DC COMICS,
 Counterclaimant,
 vs.
 JOANNE SIEGEL, an individual; and
 LAURA SIEGEL LARSON, an
 individual,
 Counterclaim Defendants.

**DISCOVERY MATTER
 LOCAL RULE 37**

1 I, Marc Toberoff, declare as follows:

2 1. I am an attorney at the Law Offices of Marc Toberoff, PLC, counsel of
3 record for plaintiffs Joanne Siegel and Laura Siegel Larson (“Plaintiffs”). I am a
4 member in good standing of the State Bar of California and submit this declaration in
5 support of Plaintiffs objection to Defendants’ Notice of New Evidence. I have
6 personal knowledge of the facts set forth in this declaration and, if called as a witness,
7 could and would testify competently to such facts under oath.

8 2. Attached hereto as Exhibit “A” is a true and correct copy of the Court’s
9 December 12, 2007 order.

10 3. Attached hereto as Exhibit “B” is a true and correct copy of a letter
11 from me to defendants’ counsel Adam Hagen dated April 4, 2008.

12 4. Attached hereto as Exhibit “C” is a true and correct copy of a second
13 letter from me to defendants’ counsel Adam Hagen dated April 4, 2008.

14 5. Attached hereto as Exhibit “D” is a true and correct copy of an e-mail
15 from Adam Hagen to me dated April 4, 2008.

16 6. Attached hereto as Exhibit “E” is a true and correct copy of a letter from
17 Adam Hagen to me dated April 4, 2008.

18

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

21 Executed on April 10, 2008 in Los Angeles, California.

22

23

24

25

26

27

28

/s/

Marc Toberoff

EXHIBIT A

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: December 12, 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 GRANTING DEFENDANTS' EX PARTE APPLICATION TO SET
REBUTTAL EXPERT REPORT; ORDER CONTINUING PRE-TRIAL AND
TRIAL DATES (IN CHAMBERS)

A central discovery issue in this case has been the conduct of the damages-related audit of defendants' businesses and disputes related thereto. Plaintiffs' financial expert, Mr. Steven Sills, was afforded leave by this Court to conduct an on-site damages-related audit of defendants' businesses to be completed by October 9, 2007. During the audit, numerous production-related disputes arose, none of which were presented to the Court by way of a motion to compel. Despite these production issues, Mr. Sills nonetheless submitted a supplemental expert report on November 13, 2007. Upon receipt of the report, defendants informed plaintiffs' counsel of the need for additional time for their financial expert, Mr. Franklin Johnson, to submit a rebuttal report. After a back and forth between the parties that apparently became tied up with plaintiffs' demands for resolution of the audit-related production issues, defendants filed the present ex parte request related solely to the time to provide a rebuttal report.

Defendants' financial expert represents to the Court that he will need until January 14, 2008, to submit his rebuttal report, due to the fact that the numbers in Mr. Sills report do not match up with the numbers Mr. Johnson has calculated based on his review of defendants' books:

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CIVIL -- GEN

Initials of Deputy Clerk jh

Our task is particularly challenging in that we do not have Mr. Sills' binder. For the records we have inspected to date, many of his numbers do not agree with amounts we have inspected and the reasons for the differences are not readily apparent. . . . This is particularly so because the Sills Report seems to contain certain alleged revenue and expense numbers for Defendants' properties which do not correspond with the revenue and expense numbers we have been able to determine from our review of Defendants' books and records

(Decl. Franklin Johnson ¶¶ 3-4). This reason for the requested extension appears related to plaintiffs' complaint they have been denied access to all of defendants "books and records." As explained in their opposition: "Such financial information gaps should necessarily be resolved so that both sides' experts and the Court are 'dealing with a full deck' and analyzing the same set of financial data in computing Plaintiffs' damages. Whereas the parties' experts may disagree as to the interpretation of this data, at least they will be disagreeing over the same information." (Opp. at 2). The Court is concerned about the apparent linkage of the diverse financial calculations and these outstanding audit production issues.

Rule 26(a)(2)(C) requires that expert witness reports be made at least 90 days before the trial date. If the expert report is offered as rebuttal evidence, then said report must be made within 30 days after the submission of the report to which it is offered in rebuttal. Here, Mr. Sills submitted his "supplemental" expert report on January 12, 2007 (it is clear to the Court that Mr. Sills' initial report was simply a "placeholder" submitted because of the approaching expert cut-off and did not contain much substance owing to the fact that defendants had not furnished the necessary information for him to truly render an opinion, see Decl Marc Toberoff Ex. B at 4 & 10 ("after reviewing the scant and incomplete financial documents produced by Warner, it is clear that . . . many additional documents, as originally requested, remain necessary to properly determine an accounting to Plaintiffs [T]he documents and information requested by Plaintiffs, but not produced by Warner, is needed to make a proper and complete determination of Warner's revenues and profits. . . . In order for us to express an opinion on the actual amount due Plaintiffs in an accounting, Warner must provide the documents in its possession that on my advice have been requested by Plaintiffs")), which was the stipulated date for filing expert reports. (See Decl. Marc Toberoff, Ex. A).

The pre-trial and trial dates were subsequently continued by stipulation of the parties; moreover, the parties have again submitted a stipulation seeking for a further extension in the pre-trial and trial dates on account of the destruction of plaintiffs' counsel's home during the recent wildfires in Malibu on November 23, 2007.

Defendants mistakenly assert that plaintiffs' alleged non-compliance with Rule 26's requirements to timely tender Mr. Sills' expert report justifies their failure to submit a rebuttal report within the thirty day time frame called for in the rule. First, as noted above, there was no such non-compliance. Second, "[o]ne party's failure to comply with the expert disclosure requirement does

not excuse noncompliance by another party.” 6 JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE § 26.23[2][a][iii] at 26-74.21 (3rd ed. 2007).

Rather than attempting to resolve the narrow issue of whether to extend the time for submitting the rebuttal report, the Court opts for an all-encompassing order that conclusively sets forth the deadlines and obligations of the parties going forward in this case.

It is clear that defendants’ expert needs more time to submit a rebuttal to Mr. Sills report. It is also clear that much of this need stems from the fact that the parties’ financial experts are not playing off the same play book. Unlike plaintiffs’ expert, Mr. Johnson has unfettered access to defendants’ financial information (a point conceded by defendants, see Reply at 2 n.2 (“As an aside, however, . . . Defendants certainly have control over their own financial documents”). It is also clear to the Court that the problems in initiating a damages-related audit of defendants’ businesses has detrimentally impacted the submission and scheduling of each parties’ respective financial expert reports. If such an audit had been completed earlier, the initial report submitted by Mr. Sills in January, 2007, would have been more substantive, as would have been Mr. Johnson’s February, 2007, rebuttal report. (See Decl. Marc Toberoff, Ex. C (Mr. Johnson’s half-page rebuttal report declares that “[i]f and when Mr. Sills submits a report expressing substantive opinions or claims of any amount purportedly owing to plaintiffs, I will be prepared to and will respond to those opinions and claims”). It should come as no surprise to the parties that Mr. Sills’ post-audit report would require a true rebuttal, as the subject of Mr. Sills’ “supplemental” report contain much more depth, and was predicated on more concrete facts, than the earlier “initial” report. Indeed, it was not until the audit was completed that it can be truly said that any financial expert reports existed in this case.

This also heightens the importance of the yet unresolved production issues that have crept up during the damages-related audit itself. Defendants are correct that plaintiffs could have, if they wished, filed a motion to compel of their own to litigate these production issues and the Court itself is puzzled by the failure to do so (especially where the audit was completed more than two months ago). That said, any future motion to compel at this point might undermine any schedule that the Court now sets if these production issues are not first resolved. It appears clear that resolution of the timing of expert report and depositions requires resolution of the request for production of financial information so that a meaningful and lasting scheduling of this case can be entered.

Towards that end, the Court hereby **GRANTS** defendants’ ex parte request affording Mr. Johnson leave to submit a rebuttal report beyond the December 13, 2007, date as required by Rule 26(a)(2)(C), and further to allow a round of depositions to be taken of both sides’ financial experts. At the same time, the Court has reviewed the parties’ correspondence relating to the outstanding audit-production issues; notably, the December 6, 2007, letter from plaintiffs’ counsel identifying the areas of dispute concerning unresolved production issues during the court-ordered damages-related audit. From its review of the papers, the Court finds that certain documents or explanations concerning previously produced documents should have been produced or articulated during the audit, and therefore **ORDERS** defendants to produce and/or clarify to Mr. Sills by January 11, 2008, the following:

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- “Audit Documents” referenced on pages 3 to 4 of the December 6, 2007, letter;
- “DC Comics’ Foreign/Domestic Revenue and Expenses” referenced on page 4 of the December 6, 2007, letter;
- “DC Comics’ Publishing Division - Media” referenced on page 4 of the December 6, 2007, letter; and
- “DC Comics’ Merchandising” referenced on page 4 of the December 6, 2007, letter.

Plaintiffs’ request for “Percentage Changes” in the December 6, 2007, letter had previously been disposed of in the Court’s October 23, 2007, Order, and the Court will not revisit the issue. Nor does the Court find plaintiffs’ request for a breakdown of general and administrative expenses title-by-title (the “General and Administrative Expenses” category listed in the December 6, 2007, letter) well-founded.

Undoubtedly, once such information is produced, Mr. Sills will submit a second supplemental expert report incorporating the additional information into his earlier “supplemental” report. Accordingly, the Court hereby **ORDERS** that Mr. Sills’ submit such a second supplemental report to defendants by January 28, 2008. Once such a second supplemental report has been submitted, defendants’ financial expert, Mr. Johnson, shall have thirty days from that time to submit his rebuttal report. Upon the submission of the rebuttal report, each side, if it wishes, may conduct a deposition of those experts, said depositions to occur within two weeks of the submission of Mr. Johnson’s rebuttal report (a time frame which the parties’ purposed stipulation to continue the pre-trial and trial dates appears itself to contemplate).

These extensions in the discovery process necessarily will impact the other pre-trial and trial dates in place in this case. The parties’ themselves recognize that resolving the damages-related discovery issues and the subsequent submission of expert reports and depositions of those experts is necessary for forward progress in this case. As explained by defense counsel, “[o]f most concern was the mediation completion date; Defendants believe that both experts should be deposed prior to the mediation to provide the parties with a reasonable universe of potential damages that they can discuss during the mediation.” (Reply at 1). Plaintiffs have taken a similar position in their papers. (Opp. at 11 (observing that resolution of the issues “obviously impact[s] both Plaintiffs’ trial preparation and ability to entertain meaningful settlement negotiations”)). Accordingly, the Court hereby re-sets the following pre-trial and trial dates in this case so as to allow this final episode in discovery to conclude beforehand, afford the time plaintiffs’ counsel needs to get his personal affairs in order after the unfortunate loss of his home (as reflected in the proposed stipulated dates submitted by the parties), and compromising as little as possible with the Court’s desire for an expeditious conclusion to this litigation:

Court-ordered Mediation: March 28, 2008

CV 04-08400-SGL (RZx)

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

MINUTE ORDER of December 12, 2007

- Jury Instructions: March 31, 2008
- Objections to Jury Instructions: April 7, 2008
- Hearing on Motions in Limine: April 14, 2008, at 1:30 p.m.
- Final Pre-Trial Conference: April 28, 2008, at 11:00 a.m.
- Trial Briefs: May 5, 2008
- Trial of Case No. CV 04-8400: May 13, 2008, at 9:30 a.m.
- Trial of Case No. CV 04-8776: Thereafter, as set by Court

The parties are advised that failure to adhere to any of the deadlines or obligations imposed in this Order will result in sanctions. Furthermore, the parties are advised that the Court will brook no further submissions of ex parte applications in this case. If issues do arise after this Order (and the Court expects that this will not occur), they are to be presented to the Court in the form of a singular document (a "Joint Stipulation") submitted to the Court containing both sides respective positions.

IT IS SO ORDERED.

EXHIBIT B

LAW OFFICES OF MARC TOBEROFF

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April 4, 2008

Via Facsimile and E-Mail

Adam Hagen
Weissmann Wolff Bergman Coleman Grodin & Evall LLP
9665 Wilshire Blvd., Ninth Floor
Beverly Hills, California 90212

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

Dear Adam:

I write with respect to your e-mail of April 4, 2008, in which you communicated with the Court regarding the content of its March 26, 2008 order, the outstanding decision expected from the Court regarding the Stolen Documents (Docket Entries Nos. 244, 254, 255, 256, 257), and the April 2, 2004 decision by Judge Oliver of the Northern District of Ohio.

You indicated that you spoke with the Courtroom Deputy, James Holmes, last Friday, March 28, 2008. This is inappropriate for a number of reasons. To begin with, while communications with Mr. Holmes are not *per se* improper pursuant to Judge Larson's Standing Order No. 12, to communicate with the Court regarding possible alterations to a summary judgment order, without either advising plaintiffs' counsel that such contact was occurring, ensuring that plaintiffs' counsel was party to any such contacts or giving plaintiffs' counsel any notice or opportunity to respond until more than a week after the fact is simply beyond the pale.

Moreover, with respect to the non-typographical alterations you suggest to the Court's order, you should at least point to evidence of the accuracy of the proposed corrections *in the record*, rather than implying that the Court should rely on off-the-record and out-of-Court suggestions by defense counsel.

Finally, with respect to the fact that you are "preparing a[n *ex parte*] brief filing to the Court" regarding the recent decision by Judge Oliver, that too is improper. Pursuant to the Court's December 12, 2007 order, the parties were ordered to refrain from further *ex parte* applications, and were told to work together with respect to any issues arising after that order, and to present to the Court a "singular document" that would contain "*both* sides respective positions." Even if you interpret this order as not applying to this situation, its clear thrust is that the parties are to consult with each other, pursuant to

LAW OFFICES OF MARC TOBEROFF


Adam Hagan, Esq.
April 4, 2008
Page 2

Local Rule 7-3 and that order, *before* placing matters before the Court, which your proposed filing would singularly fail to do.

Plaintiffs demand that any briefing to the Court regarding Judge Oliver's decision will be in the form of a joint stipulation or a joint notice in which both parties can set forth their respective positions, and expect that you will notify and afford plaintiffs the opportunity to participate when you make further communications with the Court regarding substantive matters. In addition, we demand that this letter be attached to any submission you make to the Court regarding these matters.

Please feel free to telephone me with any questions regarding the above.

Very truly yours,



Marc Toberoff

cc: Michael Bergman, Esq. (via E-mail and facsimile)
James Weinberger, Esq. (via E-mail and facsimile)
Patrick Perkins, Esq. (via facsimile)

Group Send Report

Page : 001
Date & Time: Apr-04-08 01:06pm
Line 1 :
Machine ID :

Job number : 900
Date : Apr-04 01:02pm
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End time : Apr-04 01:06pm

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☎12128135901
☎18452652819

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Pages sent

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FACSIMILE COVER PAGE

TO: Adam Hagen Michael Bergman James Weinberger Patrick Perkins	FAX: 310-550-7191 212-813-5901 845-265-2819
FROM: Keith G. Adams	PAGES (including cover): 3
DATE: 4/4/2008	RE: <i>Siegel v. Time Warner et al.</i>

COMMENTS:

Please find the attached correspondence re: Adam Hagen's April 4, 2008 e-mail.

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS INTENDED ONLY FOR USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS TRANSMISSION IS NOT THE INTENDED RECIPIENT, ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TRANSMISSION TO US AT THE ABOVE ADDRESS VIA THE US POSTAL SERVICE. THANK YOU.

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EXHIBIT C

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April 4, 2008

Via Facsimile

Adam Hagen
Weissmann Wolff Bergman Coleman Grodin & Evall LLP
9665 Wilshire Blvd., Ninth Floor
Beverly Hills, California 90212

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


Dear Adam:

I write with respect to your letter of April 4, 2008, following up on your e-mail of the same date. As I stated in my letter of earlier today, your actions, including your inexplicable one-week delay in notifying plaintiffs' counsel of your contacts with the Court and your failure to cite to any record with respect to your alleged errata, were improper.

As to your contention regarding Judge Oliver's ruling that it "is procedurally proper to notify the Court of that Order through a supplemental filing," that statement mischaracterizes your prior statements and evades the issue. Your e-mail of earlier today did not reference a mere "notification" to the Court, but said that "Defendants are preparing a brief filing to the Court identifying that ruling *and how it impacts the outstanding discovery issues.*" Such a filing obviously would be substantive in nature and should have been discussed with plaintiffs pursuant to the December 12, 2007 order so that a joint filing – a form that the Court has clearly expressed a preference for – could be submitted to the Court.

Please contact me so that we can properly resolve the above.

Very truly yours,



Marc Toberoff

cc: Michael Bergman, Esq.
James Weinberger, Esq.
Patrick Perkins, Esq.

Job number : 906

*** SEND SUCCESSFUL ***

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TO: Adam Hgen Michael Bergman James Weinberger Patrick Perkins	FAX: 310-550-7191 212-813-5901 845-265-2819
FROM: Keith G. Adams	PAGES (including cover): 2
DATE: 4/4/2008	RE: Siegel v. Time Warner et al.

COMMENTS:

Please find the attached correspondence re: Adam Hagen's April 4, 2008 letter.

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Page : 001
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EXHIBIT D



Subject: Joanne Siegel et al v. Time Warner Inc. et al (case Nos. CV-04-8400-SGL (RZx) and CV-04-8776-SGL (RZx))

Date: Fri, 4 Apr 2008 11:27:08 -0700

From: "Adam Hagen" <AHagen@wwllp.com>

To: James_Holmes@cadc.uscourts.gov

CC: "Michael Bergman" <MBergman@wwllp.com>, "Roger Zissu" <RZissu@frosszelnick.com>, mtoberoff@ipwla.com

Dear Mr. Holmes:

As I discussed with you last Friday, Defendants noticed several small errors and typos in the Court's March 26, 2008 Order which we wanted to bring to the Court's attention before the Court publishes the Order. These do not include any substantive or factual errors or omissions that may exist in the Order, which Defendants reserve the right to address as and when appropriate.

Page 15, line 26 - "Comics" should not have an apostrophe

Page 20, line 16 - Paul Levitz is the President and Publisher of DC Comics, not the Executive Vice President and Publisher

Page 20, footnote 4 - Mr. Levine was the Assistant Chief of the Examining Division of the Copyright Office and head of the Arts Section, not the General Counsel (note: Defendants' April 30, 2007 Motion for Partial Summary Judgment mistakenly listed Mr. Levine as former General Counsel at p. 41, fn. 31).

Page 23, lines 3-4 - Paul Levitz is the President and Publisher of DC Comics, not the General Counsel

Page 33, line 22 - should be "Evanier," not "Evaier"

Page 34, line 9 - should be "chock full," not "chalk full"

Page 34, line 22 - "Plaintiffs" should have an apostrophe

Page 64, line 13 - either "of" or "has" should be removed

Page 68, line 8 - "Comics" should have an apostrophe

I also inquired on the status on the outstanding discovery issues regarding the "Escrow Documents," which the Court indicated it would decide shortly at page 9 of its October 23, 2007 Discovery Order. You asked that I identify the pertinent docket entries, which I have listed below:

09/20/2007 244 DECLARATION of Marc Toberoff pursuant to the Court's 9/17/07 Order [236](#) filed by Plaintiffs Joanne Siegel, Laura Siegel Larson, Counter Defendants Laura Siegel Larson, Joanne Siegel. (mrgo) (Entered: 09/21/2007)

09/25/2007 254 DECLARATION of Michael Bergman in response to declaration of Marc Toberoff filed pursuant to the Court's 9/17/07 order filed by Defendants Warner Bros Entertainment Inc, Time Warner Inc, DC Comics, Counter Claimants DC Comics, Time Warner Inc, Warner Bros Entertainment Inc. (mrgo) (Entered: 09/26/2007)

09/27/2007 255 OBJECTION to the Declaration of Michael Bergman [254] Re the Court's 9/17/07 Order filed by Plaintiffs, Counter Defendants Laura Siegel Larson, Joanne Siegel. Declaration of Marc Toberoff. (ad) (Entered: 09/27/2007)

09/28/2007 256 OBJECTIONS to plaintiffs' Reply papers concerning the "Escrow Documents" and declaration of Michael Bergman in response thereto filed by Defendants Warner Bros Entertainment Inc, Time Warner Inc, DC Comics, Counter Claimants DC Comics, Time Warner Inc, Warner Bros Entertainment Inc. (mrgo) (Entered: 10/03/2007)

10/01/2007 257 OBJECTIONS to the second declaration of Michael Bergman pursuant to the Court's 9/17/07 order filed by Plaintiffs Joanne Siegel, Laura Siegel Larson, Counter Defendants Laura Siegel Larson, Joanne Siegel. (mrgo) (Entered: 10/05/2007)

Please also be advised that Judge Solomon Oliver, Jr. in the Northern District of Ohio recently issued a ruling relating to some of the documents at issue in the parties' "Escrow Documents" papers. Defendants are preparing a brief filing to the Court identifying that ruling and how it impacts the outstanding discovery issues, which Defendants will file shortly.

Kind Regards,
Adam Hagen
Weissmann Wolff Bergman Coleman Grodin & Evall LLP

9665 Wilshire Blvd., Ninth Floor
Beverly Hills, California 90212
(310)858-7888

EXHIBIT E

WWBCGE

VIA FACSIMILE

April 4, 2008

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

Adam Hagen
ahagen@wwllp.com

Re: Superman Litigation
Case Nos. CV 04-8400 and CV 04-8776

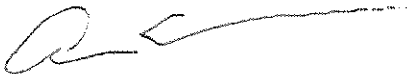
Our File No. 2231.811

Dear Marc:

I have reviewed the letter you just sent regarding my e-mail to James Holmes and thoroughly disagree with your unwarranted assertions. Quite simply, my discussion with Mr. Holmes last Friday was devoid of substance, merely advising him that we had identified certain non-substantive errors in the Order and asking if we should submit an errata statement in the event the Court wished to correct those errors prior to publishing the Order. Mr. Holmes asked me to include the list in an email, providing a copy to you. I then inquired about the status of the undecided issues regarding the "escrow documents" and Mr. Holmes asked me to include a reference to the pertinent filings in the email, which I did. My actions were specifically requested by the Court, and wholly proper.

Finally, your attempt to categorize our proposed filing with the Court regarding Judge Oliver's ruling as a new motion that needs to be vetted through the joint stipulation process is not well taken. Judge Oliver's Order directly relates to the "escrow documents" issues that are already pending before the Court, and it is procedurally proper to notify the Court of that Order through a supplemental filing.

Very truly yours,



Adam Hagen

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339121_1.DOC LAWYERS

WWBCGE

FACSIMILE TRANSMISSION

Date: April 4, 2008
From: Adam Hagen
E-mail: ahagen@wwllp.com
Pages: 2 (including cover)
Subject: *Superman Litigation*

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

Message:

Please see attached.

WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP
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LAWYERS

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