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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

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

Plaintiff,

v.

WARNER BROS. ENTERTAINMENT
INC., a corporation; TIME WARNER
INC., a corporation; DC COMICS
INC., a corporation; and DOES 1-10,

Defendants.

Case No. CV 04-08400-SGL (RZx)
STANDING ORDER

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AND RELATED COUNTERCLAIMS

**READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE
AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.**

This action has been assigned to the calendar of Judge Stephen G. Larson.
Both the Court and the attorneys bear responsibility for the progress of litigation in the
Federal Courts. To secure the just, speedy, and inexpensive determination of every
action, Fed. R. Civ. P. 1, all counsel of record are ordered to familiarize themselves with

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1 the Federal Rules of Civil Procedure and the Local Rules of the Central District of
2 California.

3 IT IS HEREBY ORDERED:

4 1. **Service of the Complaint:** The Plaintiff shall promptly serve the
5 Complaint in accordance with Fed. R. Civ. P. 4 and file the proofs of service pursuant to
6 Local Rule 5-3.1 within three days after service thereof. Defendants also shall timely
7 file their responsive pleadings and file proofs of service within three days thereafter.

8 2. **Presence of Lead Counsel:** Lead trial counsel shall attend all
9 proceedings before this Court, including all status and settlement conferences. Failure
10 of lead trial counsel to appear for those proceedings without express leave of court is a
11 basis for sanctions.

12 3. **Discovery:** All discovery matters have been referred to a United States
13 Magistrate Judge (see initial designation following the case number) to hear all
14 discovery disputes. The words "DISCOVERY MATTER" shall appear in the caption of
15 all documents relating to discovery to insure proper routing. Counsel are directed to
16 contact the Magistrate Judge Courtroom Deputy Clerk for the assigned Magistrate
17 Judge to schedule matters for hearing.

18 The decision of the Magistrate Judge shall be final, subject to modification by the
19 District Court only where it has been shown that the Magistrate Judge's order is clearly
20 erroneous or contrary to law.

21 Any party may file and serve a motion for review and reconsideration before this
22 Court. The party seeking review must do so within ten (10) days of service upon the
23 party of a written ruling or within ten (10) days of an oral ruling that the Magistrate
24 Judge states will not be followed by a written ruling. The motion must specify which
25 portions of the text are clearly erroneous or contrary to law and the claim must be
26 supported by points and authorities. A copy of the moving papers and responses shall
27 be delivered to the Magistrate Judge's clerk for review upon the filing of the required
28 documents.

1 Unless there is a likelihood that upon motion by a party the Court would order
2 that any or all discovery is premature, it is advisable for counsel to begin to conduct
3 discovery actively before the Scheduling Conference. At the very least, the parties shall
4 comply fully with the letter and spirit of Fed. R. Civ. P. 26(a) and thereby obtain and
5 produce most of what would be produced in the early stage of discovery, because the
6 Court will impose tight deadlines to complete discovery at the Scheduling Conference.

7 If expert witnesses are to be called at trial, the parties shall designate experts to
8 be called at trial and provide reports required by Fed. R. Civ. P. 26(a)(2)(B) not later
9 than eight (8) weeks prior to the discovery cutoff date. Rebuttal expert witnesses shall
10 be designated and reports provided as required by Fed. R. Civ. P. 26(a)(2)(B) not later
11 than five (5) weeks prior to the discovery cutoff date. Failure to timely comply with this
12 deadline may result in the expert being excluded at trial as a witness.

13 **4. Motions:**

14 **(a) Time for Filing and Hearing Motions:** Motions shall be filed in
15 accordance with Local Rules 6-1 and 7-2, et seq.¹ This Court hears motions on
16 Mondays, commencing at 10:00 a.m. No supplemental brief shall be filed without prior
17 leave of Court. Conformed courtesy copies of opposition and reply papers shall be
18 delivered to the courtesy box on the wall outside the entrance to Courtroom No. One,
19 located on the Second Floor of the U.S. Courthouse, 3470 Twelfth Street, Riverside,
20 California, **by 4:00 p.m. on the date due.** Many motions to dismiss or to strike could
21 be avoided if the parties confer in good faith (as they are required to do under L.R. 7-3),
22 especially for perceived defects in a complaint, answer, or counterclaim which could be
23 corrected by amendment. See Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir. 1996)

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26 ¹ Among other things, Local Rule 7-3 requires counsel to engage in a pre-filing
27 conference "to discuss thoroughly . . . the substance of the contemplated motion and any
28 potential resolution." Counsel should discuss the issues sufficiently so that if a motion is
still necessary, the briefing may be directed to those substantive issues requiring
resolution by the Court. Counsel should resolve minor procedural or other
nonsubstantive matters during the conference.

1 (where a motion to dismiss is granted, a district court should provide leave to amend
2 unless it is clear that the complaint could not be saved by any amendment). Moreover,
3 a party has the right to amend its complaint "once as a matter of course at any time
4 before a responsive pleading is served." Fed. R. Civ. P. 15(a). A 12(b)(6) motion is not
5 a responsive pleading for purposes of Rule 15(a) and therefore plaintiff might have a
6 right to amend. See Nolen v. Fitzharris, 450 F.2d 958, 958-59 (9th Cir. 1971); St.
7 Michael's Convalescent Hospital v. California, 643 F.2d 1369, 1374 (9th Cir. 1981).
8 Even where a party has amended its Complaint once, or where a responsive pleading
9 has been served, the Federal Rules provide that leave to amend "shall be freely given
10 when justice so requires." Fed. R. Civ. P. 15(a). The Ninth Circuit requires that this
11 policy favoring amendment be applied with "extreme liberality." Morongo Band of
12 Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)(citing DCB Programs,
13 Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987)). These principles require that
14 counsel for the plaintiff should carefully evaluate the defendant's contentions as to the
15 deficiencies in the complaint and, in many instances, the moving party should agree to
16 any amendment that would cure a curable defect.

17 In the unlikely event that motions under Fed. R. Civ. P. 12 challenging pleadings
18 are filed after the Rule 16 Scheduling Conference, the moving party shall attach a copy
19 of the challenged pleading to the Memorandum of Points and Authorities in support of
20 the motion.

21 The foregoing provisions apply as well to motions to dismiss a counterclaim,
22 answer, or affirmative defense that a plaintiff might file.

23 **(b) Length and Format of Motion Papers: Memoranda of Points**
24 **and Authorities in support of or in opposition to motions shall not exceed 25**
25 **pages. Replies shall not exceed 12 pages.** Only in rare instances and for good
26 cause shown will the Court grant an application to extend these page limitations.

27 Typeface shall comply with Local Rule 11-3.1.1. If Times Roman or another
28 proportionally spaced font is used, the size must be no less than 14-point; if Courier or

1 another monospaced font is used, the size must be no less than 12-point and there
2 must be no fewer than 10.5 characters per inch. Footnotes shall be in typeface no less
3 than one size smaller than text size and shall be used sparingly.

4 Filings that do not conform to the Local Rules and this Order will not be
5 considered.

6 (c) **Citations to Case Law:** Citations to case law must identify not
7 only the case being cited, but the specific page being referenced. Certain kinds of
8 authority are considered more useful — or authoritative — than others. If more than
9 one authority is cited in support of a proposition, these supporting authorities shall be
10 listed such that the more authoritative ones appear first.

11 (d) **Citations to Statutory Sources:** Counsel are reminded that the
12 basic purpose of a legal citation is to allow the reader to locate a cited source
13 accurately and efficiently. Accordingly, statutory references should identify, with
14 specificity, which sections and subsections are being referenced (e.g., Jurisdiction over
15 this cause of action may appropriately be found in 47 U.S.C. § 33, which grants the
16 district courts jurisdiction over all offenses of the Submarine Cable Act, whether the
17 infraction occurred within the territorial waters of the United States or on board a vessel
18 of the United States outside said waters). Statutory references which do not indicate
19 specifically which section and subsection are being referred to (e.g., Plaintiffs allege
20 conduct in violation of the Federal Electronic Communication Privacy Act, 18 U.S.C. §
21 2511, et seq.) are to be **avoided**. Citations to treatises, manuals, and other materials
22 should similarly include the volume and the section being referenced.

23 (e) **Citations to Other Sources:** Parties offering evidence in support
24 of, or in opposition to, a motion (notably a Rule 56 motion) must cite to specific page
25 and line numbers in depositions and paragraph numbers in affidavits. Furthermore,
26 such evidence must be authenticated properly. The Court directs the parties to become
27 familiar with Orr v. Bank of America, NT & SA, 285 F.3d 764 (9th Cir. 2002).

1 (f) **Courtesy Copies:** Counsel shall deliver a conformed courtesy
2 copy of all opposition and reply papers in motion matters to the courtesy box on the wall
3 outside the entrance to Courtroom No. One, located on the Second Floor of the U.S.
4 Courthouse, 3470 Twelfth Street, Riverside, California, **by 4:00 p.m. on the date due.**

5 (g) **Limits on Motions**

6 (1) **Motions for Summary Judgment or Partial Summary**

7 **Judgment:** No party may file more than one motion pursuant to Fed. R. Civ. P. 56
8 regardless of whether such motion is denominated as a motion for
9 summary judgment or summary adjudication.

10 (2) **Motions in Limine:** No party may file more than five
11 motions in limine.

12 5. **Proposed Orders:** Each party filing or opposing a motion or seeking the
13 determination of any matter shall serve and lodge a Proposed Order setting forth the
14 relief or action sought and a brief statement of the rationale for the decision with
15 appropriate citations. If the Proposed Order exceeds two pages, the proposing party
16 shall also submit the document on a 3.5-inch diskette compatible with WordPerfect X3
17 or lower.

18 6. **Ex Parte Applications:** Counsel are reminded that ex parte applications
19 are solely for extraordinary relief. See Mission Power Engineering Co. v. Continental
20 Casualty Co., 883 F. Supp. 488 (C.D. Cal. 1995). Applications which fail to conform
21 with Local Rules 7-19 and 7-19.1, **including a statement of opposing counsel's**
22 **position**, will not be considered. Any opposition must be filed not later than 24 hours
23 after service. If counsel do not intend to oppose the ex parte application, counsel must
24 inform the court clerk by telephone. The Court considers ex parte applications on the
25 papers and usually does not set these matters for hearing.

26 Counsel shall deliver a conformed courtesy copy of moving, opposition, or notice
27 of non-opposition papers to the courtesy box outside the entrance to Courtroom No. 1,
28 located on the Second floor of the U.S. Courthouse, 3470 Twelfth Street, Riverside,

1 California. The courtroom deputy clerk will notify counsel of the Court's ruling or a
2 hearing date and time, if the Court determines a hearing is necessary.

3 **7. Applications or Stipulations to Extend the Time to File any Required**
4 **Document or to Continue any Pretrial or Trial Date:** No stipulations extending
5 scheduling requirements or modifying applicable rules are effective until and unless the
6 Court approves them. Both applications and stipulations must be filed in advance of
7 the date due and set forth:

8 (a) the existing due date or hearing date as well as the discovery cutoff
9 date, the last date for hearing motions, the pre-trial conference date and the trial date;

10 (b) specific, concrete reasons supporting good cause for granting the
11 extension; and

12 (c) whether there have been prior requests for extensions, and
13 whether these were granted or denied by the Court.

14 **8. TROs and Injunctions:** Parties seeking emergency or provisional relief
15 shall comply with Fed. R. Civ. P. 65 and Local Rule 65-1. The Court will not rule on any
16 application for such relief for at least 24 hours after the party subject to the requested
17 order has been served; such party may file opposing or responding papers in the
18 interim.² The parties shall lodge a courtesy copy, conformed to reflect that it has been
19 filed, of all papers relating to TROs and injunctions. The courtesy copy shall be placed
20 in the courtesy box outside the entrance to Courtroom No. One, located on the Second
21 floor of the U.S. Courthouse, 3470 Twelfth Street, Riverside, California. All such papers
22 shall be filed "loose" — i.e., not inside envelopes.

23 **9. Cases Removed From State Court:** All documents filed in state court,
24 including documents appended to the complaint, answers, and motions, must be refiled

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26 ² Local Rule 7-19.2 - Waiver of Notice. If the Judge to whom the application is
27 made finds that the interest of justice requires that the ex parte application be heard
28 without notice (which in the instance of a TRO means that the requisite showing under
Fed. R. Civ. P. 65(b) has been made) the Judge may waive the notice requirement of
L.R. 7-19.1.

1 in this Court as a supplement to the Notice of Removal, if not already included. See 28
2 U.S.C. § 1447(a)-(b). If the defendant has not yet responded, the answer or responsive
3 pleading filed in this Court must comply with the Federal Rules of Civil Procedure and
4 the Local Rules of the Central District. If a motion was pending in state court before the
5 case was removed, it must be re-noticed in accordance with Local Rule 6-1.

6 **10. ERISA Cases:**

7 The following procedure will apply in cases in which a plaintiff seeks benefits
8 under an ERISA plan:

9 (a) Because discovery is disfavored in such cases, the parties may
10 request discovery only where it is necessary to determine the appropriate standard of
11 review and the proper scope of the administrative record. See Kearney v. Standard Ins.
12 Co., 175 F.3d 1084, 1090-91 (9th Cir. 1999). The Court will set a discovery cut-off
13 date. Any disputes concerning discovery that the parties are unable to resolve through
14 the meet and confer process shall be submitted to the assigned Magistrate Judge. The
15 parties are advised to carefully follow all of the requirements of L.R. 37-1, et. seq.

16 (b) Absent an agreed-upon statement of facts, the Court will not hear
17 motions for summary judgment; instead, the Court will consider a joint motion to
18 determine the proper standard of review. In accordance with the schedule established
19 by the Court, the parties shall file simultaneous briefs in support of their respective
20 positions on the appropriate standard of review. The parties shall also file simultaneous
21 opposing briefs.

22 (c) Prior to filing a motion to determine the proper standard of review,
23 the parties shall participate in a settlement conference pursuant to L.R. 16-14.

24 (d) Within thirty days after the entry of the Court's order (or the parties'
25 stipulation) re standard of review, the parties shall participate in a second settlement
26 conference pursuant to L.R. 16-14.

27 (e) Absent a settlement, the Court will conduct an administrative
28 review on the parties' trial briefs. The Court will not conduct a trial or hear oral

1 argument unless the Court, after receiving and reviewing the parties' trial briefs, decides
2 that such argument would be helpful to the Court. The parties shall file simultaneous
3 opening briefs and opposing briefs per the schedule established by the Court. The
4 matter will be taken under submission and the Court will issue an Order Re
5 Administrative Review.

6 With the opening briefs, the parties shall jointly lodge with the Court two copies
7 of the administrative record. The original copy must be formatted in compliance with
8 the Court's Local Rules; the chambers copy must include a table of contents, must be
9 tabbed, and must be placed in a three-ring binder.

10 (f) In addition to any applicable items set forth in the Court's Order
11 setting the Rule 26(f) conference, the parties' Rule 26(f) Report shall set forth a
12 statement of whether the parties anticipate that the Court will be required to determine
13 the appropriate standard of review.

14 (g) The Court will set a briefing schedule for and a cut-off date for
15 hearing of motions regarding standard of review and the scope of the administrative
16 record.

17 **11. Status of Fictitiously Named Defendants:** This Court intends to adhere
18 to the following procedures where a matter is removed to this Court on diversity
19 grounds with fictitiously named defendants referred to in the complaint. (See 28 U.S.C.
20 §§ 1441(a) and 1447.)

21 (a) Plaintiff is normally expected to ascertain the identity of and serve
22 any fictitiously named defendants within 120 days of the removal of the action to this
23 Court.

24 (b) If plaintiff believes (by reason of the necessity for discovery or
25 otherwise) that fictitiously named defendants cannot be fully identified within the 120-
26 day period, an ex parte application requesting permission to extend that period to
27 effectuate service may be filed with this Court. Such application shall state the reasons
28 therefor, and may be granted upon a showing of good cause. The ex parte application

1 shall be served upon all appearing parties, and shall state that appearing parties may
2 comment within seven (7) days of the filing of the ex parte application.

3 (c) If plaintiff desires to substitute a named defendant for one of the
4 fictitiously named parties, plaintiff first shall seek to obtain consent from counsel for the
5 previously-identified defendants (and counsel for the fictitiously named party, if that
6 party has separate counsel). If consent is withheld or denied, plaintiff may apply ex
7 parte requesting such amendment, with notice to all appearing parties. Each party shall
8 have seven calendar days to respond. The ex parte application and any response
9 should comment not only on the substitution of the named party for a fictitiously named
10 defendant, but on the question of whether the matter should thereafter be remanded to
11 the Superior Court if diversity of citizenship is destroyed by the addition of the new
12 substituted party. See 28 U.S.C. § 1447(e).

13 **12. Communications with Chambers:** Counsel shall not attempt to contact
14 the Court or its chambers staff by telephone or by any other ex parte means, although
15 counsel may contact the courtroom deputy, at (951) 328-4464, with appropriate
16 inquiries. To facilitate communication with the courtroom deputy, counsel should list
17 their facsimile transmission numbers along with their telephone numbers on all papers.

18 **13. Notice of this Order:** Counsel for plaintiff shall immediately serve this
19 Order on all parties, including any new parties to the action. If this case came to the
20 Court by noticed removal, defendant shall serve this Order on all other parties.

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1 **14. Internet Site:** Counsel are encouraged to review the Central District's
2 Website for additional information.³ The address is "http://www.cacd.uscourts.gov."

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4 IT IS SO ORDERED.

5 NOV - 6 2006

6 Dated: _____

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8 _____
9 STEPHEN G. LARSON
10 UNITED STATES DISTRICT JUDGE

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21 ³ Copies of the Local Rules are available on our website at
22 "http://www.cacd.uscourts.gov" or they may be purchased from one of the following:

23 Los Angeles Daily Journal
24 915 East 1st Street
25 Los Angeles, California 90012

26 West Publishing Company
27 610 Opperman Drive
28 Post Office Box 64526
 St. Paul, Minnesota 55164-0526

 Metropolitan News
 210 South Spring Street
 Los Angeles, California 90012