

1 DANIEL M. PETROCELLI (S.B. #97802)
 dpetrocelli@omm.com
 2 MATTHEW T. KLINE (S.B. #211640)
 mkline@omm.com
 3 CASSANDRA L. SETO (S.B. #246608)
 cseto@omm.com
 4 O'MELVENY & MYERS LLP
 1999 Avenue of the Stars, 7th Floor
 5 Los Angeles, CA 90067-6035
 Telephone: (310) 553-6700
 6 Facsimile: (310) 246-6779
 7 PATRICK T. PERKINS (admitted *pro hac vice*)
 pperkins@ptplaw.com
 8 PERKINS LAW OFFICE, P.C.
 1711 Route 9D
 9 Cold Spring, NY 10516
 Telephone: (845) 265-2820
 10 Facsimile: (845) 265-2819

11 Attorneys for Plaintiff DC Comics

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DC COMICS,
 15 Plaintiff,
 16 vs.

17 PACIFIC PICTURES CORPORATION;
 IP WORLDWIDE, LLC; IPW, LLC;
 18 MARC TOBEROFF, an individual;
 MARK WARREN PEARY, as personal
 representative of the ESTATE OF
 19 JOSEPH SHUSTER; JEAN ADELE
 PEAVY, an individual; JOANNE
 20 SIEGEL, an individual; LAURA
 SIEGEL LARSON, an individual,
 21 and DOES 1-10, inclusive,
 Defendants.

Case No: CV 10-03633 ODW (RZx)

Hon. Otis D. Wright II, U.S.D.J.
 Hon. Ralph Zarefsky, U.S.M.J.

DISCOVERY MATTER

[PROPOSED] ORDER
GRANTING STIPULATION RE:
DEFENDANTS' PRODUCTION
OF DOCUMENTS AND
PRIVILEGE LOGS

Complaint filed: May 14, 2010
 Trial Date: None Set

22
 23
 24
 25
 26 **NOTE: CHANGES HAVE BEEN**
 27 **MADE TO THIS DOCUMENT**
 28

1 Marc Toberoff (State Bar No. 188547)
2 *mtoberoff@ipwla.com*
3 Nicholas C. Williamson (State Bar No. 231124)
4 *nwilliamson@ipwla.com*
5 Keith G. Adams (State Bar No. 240497)
6 *kgadams@ipwla.com*
7 TOBEROFF & ASSOCIATES, P.C.
8 2049 Century Park East, Suite 2720
9 Los Angeles, California, 90067
10 Telephone: (310) 246-3333
11 Fax: (310) 246-3101

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Defendants Mark Warren
Peary, as personal representative of the
Estate of Joseph Shuster, Jean Adele
Peavy, Joanne Siegel and Laura Siegel
Larson

1 Based on the stipulation of plaintiff DC Comics together with those corporate
2 affiliates named as defendants in *Siegel v. Warner Bros. Ent. Inc.*, C.D. Cal. Case
3 No. 04-8400 ODW (RZx) and *Siegel v. Time Warner Inc.*, C.D. Cal. Case No. 04-
4 8776 ODW (RZx) (“DC”) and the relevant Defendants Mark Warren Peary, as
5 Personal Representative of the Estate of Joseph Shuster, Jean Adele Peavy, Joanne
6 Siegel, and Laura Siegel Larson (“Defendants”) (collectively, “the Parties”), and for
7 good cause shown, IT IS HEREBY ORDERED that:

8 (1) By 6:00 p.m. PST on December 7, 2010, Defendants will produce, by
9 personal service on DC’s counsel at its Century City offices, all documents and
10 other materials responsive to each and every one of DC’s Requests, except for
11 documents that are subject to a claim of attorney-client privilege, the attorney work-
12 product doctrine or any other privilege available under law, or to a claim that such
13 responsive documents and other materials are protected under the parties’ May 1,
14 2008 JAMS Confidentiality Agreement (collectively, “Privilege” or “Privileged”).
15 Aside from documents and materials subject to such a claim of Privilege or falling
16 under the exception set forth in sections (4) and (5) below, Defendants will not
17 refuse to produce or refuse to log any documents or materials based on the
18 objections Defendants previously asserted in their responses to DC’s Requests.

19 (2) By 6:00 p.m. PST on December 15, 2010, Defendants will furnish, by
20 personal service on DC’s counsel at its Century City offices, complete Privilege
21 logs identifying any and all Privileged documents and other materials for which
22 Defendants assert a claim of Privilege in response to DC’s Requests.

23 (3) In making their document production on December 7, and in any further
24 document production in this case, Defendants will reference by their Bates numbers
25 documents already produced to DC in the cases *Siegel v. Warner Bros. Ent. Inc.*,
26 C.D. Cal. Case No. 04-8400 ODW (RZx), and *Siegel v. Time Warner Inc.*, C.D.
27 Cal. Case No. 04-8776 ODW (RZx) (the “*Siegel Cases*”), rather than re-copy and
28 re-produce such documents. With respect to any request for production of

1 documents served on DC in this case, DC in making their document production will
2 likewise reference documents already produced in the *Siegel* Cases by their Bates
3 numbers, rather than re-copy and re-produce such documents. However, the Parties
4 will not be required to produce or designate by Bates numbers documents they
5 obtained solely as a result of a document production by the other side in the *Siegel*
6 Cases. The Parties reserve the right to request an inspection of the original
7 documents or any metadata and any other information associated with documents
8 produced in this manner.

9 (4) Defendants need not produce in this case, nor will DC be required to
10 produce in this case, pleadings filed in the *Siegel* Cases or this case.

11 (5) The Parties are not required to list on their respective privilege logs in
12 this case any Privileged documents created on or after May 14, 2010. As to
13 Privileged documents created prior to May 14, 2010: (a) Defendants and their
14 counsel need not log internal communications solely between or among
15 Defendants' counsel or between or among Defendants' counsel and anyone at the
16 law firm of Kendall, Brill and Klieger, in either this case or the *Siegel* Cases; (b)
17 DC and its outside counsel need not log internal communications solely between or
18 among DC's outside counsel, in either this case or the *Siegel* Cases; however, and
19 for the avoidance of doubt, (c) if a non-lawyer or in-house counsel is an author or
20 recipient of any of the communications in subsections (a) and/or (b), such
21 communications must be logged. This Stipulation is also without prejudice or
22 waiver to any party's right in the future to request or compel the identification or
23 logging of Privileged documents otherwise covered by subsections (a) and (b)
24 above, and is without prejudice or waiver to any party's right in the future to seek a
25 protective order in response to any such a request or motion to compel.

26 (6) By 6:00 p.m. PST on December 20, 2010, DC will inform Defendants in
27 writing of any issues DC has regarding Defendants' Privilege logs.

28

1 (7) The Parties will thereafter meet and confer on December 21, 2010, at
2 2:00 p.m. PST regarding any such issues. DC reserves all rights after this
3 conference to bring a motion challenging Defendants' privilege logs and document
4 production, and DC and Defendants reserve all their respective rights and
5 arguments with respect to any such motion. However, DC shall not serve any such
6 motion prior to January 3, 2011, due to the intervening holidays. Notwithstanding
7 this reservation of rights, DC hereby agrees that Defendants have not waived any
8 Privilege by virtue of not serving their privilege logs until December 15, 2010 in
9 response to DC's Requests.

10 (8) DC's Motion to Compel the Production of Documents and Privilege
11 Logs is hereby withdrawn without prejudice, and the hearing set for December 27,
12 2010 is vacated.

13
14 IT IS SO ORDERED.

15
16 Dated: December 07, 2010

17 
18 _____
19 Honorable Ralph Zarefsky
20 Magistrate Judge, United States District Court
21
22
23
24
25
26
27
28