

FILED
at Santa Fe, NM

UNITED STATES DISTRICT COURT

AUG 25 2006

DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

**IN RE: SUBPOENAS *DUCES TECUM*
ISSUED BY THE U.S. DISTRICT
COURT FOR THE DISTRICT OF
NEW MEXICO IN:**

Case No. MC-06-20 MV

**JOANNE SIEGEL and LAURA
SIEGEL LARSON,**

Case Nos. CV 04-8400; 04-8776
(Consolidated for Discovery
Purposes)

Plaintiffs,

Action Pending in the U.S. District
Court for the Central District of
California

v.

**WARNER BROS. ENTERTAINMENT
INC., et al.,**

Defendants.

**DECLARATION OF MARC TOBEROFF, ESQ. IN
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
PURSUANT TO SUBPOENA DUCES TECUM,
FOR CONTEMPT, AND FOR ATTORNEYS FEES**

DECLARATION OF MARC TOBEROFF

I, Marc Toberoff, declare as follows:

1. I am an attorney at the Law Offices of Marc Toberoff, PLC, counsel of record for Mark Warren Peary and Jean Adele Peavy (the "Shuster Heirs" or the "Shusters"). I am a member in good standing of the State Bar of California and submit this declaration in opposition to defendants' ("Defendants") Motion to Compel Production of Documents, for Contempt and for Attorneys' Fees. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Mark Warren Peary ("Warren") and Jean Adele Peavy ("Jean") are the sister and nephew, respectively, of Joseph Shuster ("Shuster"), now deceased, the illustrator of the original "Superman" comic books. Warren is Jean's son and the recently appointed executor of Shuster's estate.

3. I represent Joanne and Laura Siegel (the "Siegels" or "Plaintiffs"), widow and daughter of Jerry Siegel, the co-author of the world renowned comic book hero, "Superman," and the sole author of "Superboy." I represent them in declaratory relief actions in the Central District Court of the State of California regarding their proper exercise of their right under section 304(c) of the 1976 United States Copyright Act, 17 U.S.C. § 304(c), to recapture Jerry Siegel's original copyrights in "Superman" and "Superboy" by serving statutory notices on April 3, 1997 and March 8, 2002, respectively terminating Siegel's prior grant(s) of "Superman" and "Superboy" to Defendants' predecessor(s).

4. A true and correct copy of Judge Ronald S. Lew's March 23, 2006 Order granting Joanne and Laura Siegel's motion for partial summary judgment in the "Superboy" action is attached hereto as Exhibit "A."

5. On May 13, 2005, I caused Defendants' attorneys herein to be served with the Siegels' first set of requests to DC for production of documents.

6. On May 13, 2005, I caused Defendants' attorneys to be served with the Siegels' first set of requests to WB for production of documents.

7. On June 13, 2005, Defendants DC and WB served my law offices with responses to the Siegels' respective requests for production.

8. In response to the Siegels' first set of requests for production, DC made a portion of their non-privileged documents available for copying on August 9, 2005. A true and correct copy of the letter from Weinberger to me dated August 9, 2005 informing me of this is attached hereto as Exhibit "B."

9. Defendant DC did not serve a privilege log on my law offices until April 7, 2006. A true and correct copy of the letter from Weinberger to me dated April 7, 2006 enclosing DC's privilege log is attached hereto as Exhibit "C."

10. In response to the Siegels' first set of requests for production served on WB on May 13, 2005, WB first made documents available to Plaintiffs for copying on June 2, 2006. A true and correct copy of the letter dated June 2, 2006 from Defendants' attorneys informing me of this is attached hereto as Exhibit "D."

11. WB subsequently served their privilege log on my law offices on June 27, 2006. A true and correct copy of the letter dated June 27, 2006 from Defendants' attorneys to me enclosing their privilege log is attached hereto as Exhibit "E."

12. In April, 2006, soon after the Shusters had been served with Defendants' subpoenas ("Subpoenas"), I discussed with Defendants' lead trial counsel Roger Zissu ("Zissu"), the possibility of holding the Shusters' depositions in Los Angeles the week of June 21, 2006 when they were expected to attend the premiere of Defendants' movie, "Superman Returns" (the "Premiere"). As the parties were also seeking to schedule Joanne and Laura Siegel's depositions at this time, this suggestion was met with Mr. Zissu's approval. I was also at this time in contact with Warner Bros.' Senior Litigation counsel, Wayne Smith ("Smith"), arranging the details of the Shusters' attendance at the Premiere. Mr. Smith was equally receptive to the taking of the Shusters' depositions

while they were in Los Angeles. The parties' discovery plan resulted in the depositions of the Shuster being taken "off calendar" by Defendants until at least the week of June 21, 2006 when the Shusters were expected in Los Angeles to attend the Premiere. At this time I also instructed the Shusters to locate documents responsive to Defendants' Subpoenas.

13. On May 3, 2006, Defendants' counsel Patrick Perkins ("Perkins") sent me an email requesting available dates for the Shusters' deposition. I answered his email the same day, reiterating my suggestion that the depositions be held around June 21, 2006 in Los Angeles, during the week of the Premiere as this would be convenient for the parties. Perkins rejected this proposal via an email sent May 31, 2006. I reemphasized my request via email the same day.

14. Perkins rejected my repeated requests to have the Shusters' depositions held in Los Angeles during the Premiere. From May 3, 2006 until June 19, 2006, when Perkins claimed there was no possibility of taking the Shuster depositions during their visit to Los Angeles for the Premiere. Perkins never offered any alternative dates to hold the Shusters' depositions. On June 19, 2006, Perkins sent an email claiming there was no possibility of taking the Shuster depositions during their visit to Los Angeles.

15. The Shusters produced documents responsive to the Subpoenas and relevant to the Siegel Litigations on July 14, 2006. A true and correct copy of the July 14, 2006 cover letter accompanying the document production is attached hereto as Exhibit "F."

16. At Perkins' request, the Shusters and I readily agreed to hold their depositions in Santa Fe on August 8 and 9, 2006, respectively.

17. On August 1, 2006 Defendants filed their Motion to Compel Production of Documents in the U.S. District Court, District of New Mexico. Perkins informed me of the filing via email August 2, 2006. At this time he also cancelled the Shusters' August 8

and 9, 2006 depositions. The Shusters remain ready to have their depositions taken. A true and correct copy of Perkins August 2, 2006 email is attached hereto as Exhibit "G."

18. The Shusters, in an effort to amicably resolve the discovery dispute, renewed their search for responsive documents. I furnished to Perkins a supplemental production of what they found on August 11, 2006. This production included both the Shuster's Notice of Termination as well as probate documents for Joseph Shuster, including his will. A small privilege log was also submitted at this time. I am informed and believe the Shusters have turned over all responsive documents. True and correct copies of the Shusters Objections to Defendants' Subpoena dated August 11, 2006 and the Shuster's privilege log are attached hereto as composite Exhibit "H."

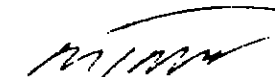
19. On August 14, 2006, the Shusters, on their own initiative, produced a fully executed copy of a partially executed agreement produced on August 11, 2006 in further compliance with the Subpoenas. A true and correct copy of the August 14, 2006 cover letter accompanying the document production is attached hereto as Exhibit "I."

20. In response to Perkins' subsequent objection to the particular wording of the Shusters' August 11, 2006 written objections, they amended their objections. A true and correct copy of the Shusters' Amended Objections to Defendants' Subpoena dated August 16, 2006 is attached hereto as Exhibit "J."

21. A true and correct copy of the August 1, 1992 letter signed by Paul Levitz, Frank Shuster, and Jean Shuster Peavy is attached hereto as Exhibit "K."

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

Executed on August 25, 2006 in Los Angeles, California.



Marc Toberoff

EXHIBIT A

1 Warner, Inc.'s Motion for Summary Judgment came on regularly
2 for hearing on March 20, 2006. This Court has considered
3 all of the papers and argument submitted on the matter and
4 **NOW FINDS AND RULES AS FOLLOWS:**

5
6 As a preliminary matter, this Court **GRANTS** Plaintiffs'
7 and Defendants' requests for Judicial Notice pursuant to
8 Fed. R. Evid. 201.

9
10 This copyright dispute arises out of facts stemming
11 back to 1938 and earlier, and including two previous cases
12 in 1947 and 1973. Plaintiffs in this case are Joanne
13 Siegel, widow of Jerome Siegel,¹ and their daughter, Laura
14 Siegel Larson. Jerome Siegel and Joseph Shuster are the
15 creators of Superman. Jerome Siegel is the originator,
16 creator of Superboy with Joseph Shuster providing much of
17 the illustration. Defendants in this case are Time Warner
18 Inc., the parent company of DC Comics ("Defendants"). DC
19 Comics predecessor in interest was National Comics
20 Publications, Inc. ("National") and its predecessor in
21 interest was Detective Comics ("Detective").

22
23 In 1947, Jerome Siegel and Joseph Shuster sued National
24 in the New York Supreme Court for the County of Westchester
25

26 ¹ Jerome Siegel passed away on January 28, 1996.

1 ("the state court action") seeking a determination that
2 their March 1, 1938 contract was void. Additionally, the
3 state court action sought to determine who owned the rights
4 to Superman and to Superboy.

5
6 On November 1, 1947 Judge Addison Young, the official
7 referee in the state court action, rendered a detailed
8 interlocutory judgment. Then on April 12, 1948, Judge Young
9 signed a detailed findings of fact and conclusions of law.
10 He found that Jerome Siegel was the originator and sole
11 owner of the comic strip feature Superboy with the sole and
12 exclusive right to create, sell, and distribute the comic
13 strip under the title Superboy.

14
15 On May 19, 1948 the parties entered into a stipulation
16 to settle and on May 21, 1948, the Court entered a consent
17 judgment, vacating in all respects the interlocutory
18 judgment. The stipulation provided for a payment of
19 approximately \$94,000.00 by National in exchange for
20 ownership in both Superman and Superboy.

21
22 In 1973, Siegel and Shuster again sued National in the
23 Southern District of New York seeking declaratory relief
24 that they were entitled to the copyright renewal rights of
25 Superman. National counterclaimed for a finding of
26 declaratory relief in its favor. District Judge Lasker

1 granted National's Motion for Summary Judgement dismissing
2 the complaint and finding "National to be the owner of the
3 copyright of all Superman strips during the renewal term."
4 Siegel & Shuster v. National Periodical Publications, Inc.,
5 364 F. Supp. 1032, 1033 (S.D.N.Y. 1973).

6
7 Judge Lasker noted that the findings of the State
8 Supreme Court of Westchester were binding on the district
9 court. Id. (citing to Vernitron Corp. v Benjamin, 440 F.2d
10 105, 108 (2d Cir. 1971)). Judge Lasker made a clear
11 distinction between (1) the findings of fact of the state
12 court and (2) the stipulated settlement and resulting
13 consent judgment. Siegel & Shuster, 508 F.2d at 913.

14
15 Siegel and Shuster appealed and the Second Circuit
16 affirmed finding that the district court "properly decided
17 that the state court judgment of May 21, 1948 effectively
18 estopped the plaintiffs from relitigating the issue of
19 ownership of the renewal copyright." Siegel & Shuster v.
20 National Periodical Publications, Inc. et al., 509 F.2d 909,
21 912-13 (2d Cir. 1974).

22
23 In November 2002, Jerome Siegel's widow and daughter
24 served notices of termination for the Superboy copyrights
25 pursuant to Section 304(c). Today, Plaintiffs seek a
26 determination that they effectively terminated Defendants'

1 renewal rights in Superboy pursuant to 17 U.S.C. § 304(c) on
2 November 17, 2004.

3
4 17 U.S.C. § 304(c) provides for termination of
5 transfers and licenses covering the extended renewal term.
6 Under the 1901 Copyright Act, protection was divided into
7 two separate consecutive terms of twenty-eight years: the
8 "initial term" and the "renewal term." But as most
9 authors/creators were required to contract away both the
10 initial and renewal periods at the same time, they were
11 effectively denied the protection Congress sought to
12 provide.

13
14 As a result, on January 1, 1978, the 1976 Copyright Act
15 took effect significantly enhancing the rights of authors
16 and their heirs. 19 U.S.C. § 101, et seq. The 1976 Act
17 extended the renewal term from 28 to 47 years, for works in
18 their renewal term when the 1976 Act took effect. Along with
19 adding 19 years to the renewal term period, the 1976 Act
20 coupled the extension with a new right of authors and their
21 heirs to recapture the renewal of the copyright in works by
22 terminating any prior grant of the work executed before
23 January 1, 1978. 17 U.S.C. § 304(c). It is under this
24 provision that Plaintiffs have sought to recapture Jerome
25 Siegel's ownership in the Superboy copyrights.

26

1 Fundamental to the arguments presented by both
2 Plaintiffs and Defendants is the effect of the interlocutory
3 judgment issued by Judge Young on November 21, 1947 and the
4 detailed findings of fact and conclusions of law he issued
5 on April 21, 1948.

6
7 Currently, Defendants attempt to relitigate issues
8 determined in the 1947 state court case. Defendants argue
9 vigorously that only the consent judgment has any preclusive
10 effect and that Judge Young's findings of fact have no
11 effect whatsoever on this litigation. Defendants take this
12 position because their desired outcome is consistently in
13 direct conflict with the findings issued by Judge Young.
14 Specifically, Judge Young's findings contradict Defendants'
15 assertions regarding (1) the ownership of Superboy; (2)
16 whether Superboy is simply a derivative work of Superman;
17 and (3) whether Superboy was a "work for hire" solely owned
18 by Defendants' predecessors in interest, National and
19 Detective.

20
21 Defendants' current argument that Judge Young's
22 findings are not binding contradicts the position taken by
23 their predecessors in interest in the 1973 litigation and
24 the 1974 Second Circuit appeal regarding Superman. In
25 applying the doctrine of res judicata in favor of
26 Defendants, Judge Lasker precluded, and the Second Circuit

1 affirmed, Plaintiffs from litigating the issue of ownership
2 of the renewal period of the Superman copyrights.

3
4 Having relied on Judge Young's findings for previous
5 favorable determinations regarding Superman, Defendants now
6 take the inconsistent position that this Court is not bound
7 by the state court findings, as they relate to Superboy.
8 Defendants attempt to raise genuine issues of material fact,
9 where the facts were clearly determined by Judge Young after
10 the opportunity to take evidence and hear testimony on that
11 evidence from the parties directly involved in creating this
12 relationship.

13
14 Contrary to Defendants' assertions now, both the
15 Southern District of New York and the Second Circuit looked
16 directly to, even citing to, Judge Young's findings of fact.
17 This Court holds that it is consistent to continue this
18 position and will look to Judge Young's findings as binding
19 where relevant. Here, while the consent judgment vacated
20 the interlocutory judgment in its entirety, this Court in
21 keeping a consistent position with the previous litigation
22 holds that Judge Young's findings of fact have preclusive
23 res judicata and collateral estoppel effect on this Court.

24
25 This Court now finds that Plaintiffs have availed
26 themselves of their legal right to recapture the Superboy

1 copyrights pursuant to 17 U.S.C. § 304(c) and 37 C.F.R.
2 210.10. As such, this Court GRANTS Plaintiffs' Motion for
3 Partial Summary Judgment.

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4

5 Defendants argued that Plaintiffs' Superboy notices of
6 termination are ineffective, because the 1976 Act specifies
7 that only grants relating to "any copyright subsisting in
8 either its first or renewal term on January 1, 1978" are
9 subject to Section 304(c).

10

11 However, Plaintiffs presented uncontroverted evidence
12 supporting that the Superboy copyright was in fact
13 subsisting in its renewal term as of the 1976 Act's
14 effective date. Specifically, Plaintiffs pointed to the
15 fact that the copyright in the serialized magazine, *More Fun*
16 *Comics*, No. 101 was secured on November 23, 1944 with
17 registration number B653651 and then renewed on July 17,
18 1972, twenty-eight years later, by National under renewal
19 registration number R532582. In the 1947 state court
20 action, Judge Young specifically determined that Detective
21 Comics published the Superboy comic strip based upon the
22 idea, plan, and conception of Siegel, in a magazine entitled
23 *More Fun Comics*.

24

25 Alternatively, Defendants argued that, even if the
26 copyrights were subsisting in their renewal period as of

1 January 1, 1978, Plaintiffs' notices of termination are
2 ineffective as the submissions are not eligible for
3 termination as "works made for hire." The Ninth Circuit has
4 summarized the work for hire doctrine as follows:

5 When one person engages another, whether as
6 employee or as an independent contractor, to
7 produce a work of an artistic nature, . . . in the
8 absence of an express contractual reservation of
9 the copyright in the artist, the presumption arises
10 that the mutual intent of the parties is that the
11 title to the copyright shall be in the person at
12 whose instance and expense the work is done.

13 Self-Realization Fellowship Church v. Ananda Church of Self-
14 Realization, 206 F.3d 1322, 1326 (9th Cir. 2000) (quoting
15 Lin-Brook Builders Hardware v. Gertler, 352 F.2d 298, 300
16 (9th Cir. 1965)).

17
18 Defendants' argument that Superboy was a work for hire
19 fails, as this conclusion directly conflicts with Judge
20 Young's findings in the state court action. Specifically,
21 Judge Young found that

22
23 (1) Under Siegel and Shuster's September 12, 1938 agreement
24 with Detective Comics, they were to provide Detective
25 with the right of first refusal and a six week
26

1 consideration period.²

2
3 (2) On November 30, 1938, Siegel submitted in a writing
4 mailed to Detective for its consideration a synopsis,
5 summary of idea, conception, plan for a new comic known
6 as Superboy pursuant to the September 12, 1938
7 agreement.³

8
9 (3) Detective declined to indicate its election to publish
10 Superboy within the six weeks and on December 2, 1938
11 Detective by letter to Siegel elected not to publish
12 Superboy.⁴

13
14 While not mentioning the term "work for hire," Judge
15 Young's findings naturally implicate the question. Here a
16 presumption of "work for hire" cannot be found in
17 Defendants' favor, since not only did Judge Taylor find that
18 Defendants elected not to publish Superboy, but he also

19
20
21 ² Judge Young found that Siegel independently created his
22 original Superboy Synopsis and Superboy Story under the terms of the
23 September 12, 1938 agreement between Siegel and his publisher, which
24 permitted him to create new comic strip concepts and stories outside
the five Siegel and Shuster were currently producing for Detective.
The agreement only allowed Detective a right of first refusal to
accept/reject within six weeks of a new submission. [Decl. Toberoff
Exh. B, Pg. 32 FOF 156-159, 160-162].

25 ³ [Decl. Toberoff Exh. B, Pg. 32 FOF #155, 156].

26 ⁴ [Decl. Toberoff Exh. B, Pg. 32 FOF #158, 159].

1 found that Plaintiff Siegel and, not National, was the sole
2 owner of the Superboy property. This finding will not
3 support a contrary conclusion that the "mutual intent of the
4 parties" was to have ownership of Superboy always be in
5 Detective or National, and therefore, the Defendants in this
6 action.

7
8 Alternatively, Defendants argued that Siegel created
9 Superboy as a derivative work based upon a pre-existing
10 original work whose copyright was owned by the hiring party,
11 and is therefore "produced at the instance and subject to
12 the right and control of the employing party." See Playboy
13 Enters. Inc. v. Dumas, 53 F.3d 549, 554 (2d Cir. 1995).

14
15 Here again, Defendants' argument that Superboy is
16 simply a "derivative work" of Superman is unpersuasive. The
17 1947 state court action specifically addressed the ownership
18 rights to Superman and Superboy separately. Defendants'
19 attempt to recast Superboy as a "derivative work" or "work
20 for hire," stands in stark contrast to Judge Young's
21 conclusion that Detective/National was "perpetually enjoined
22 and restrained from creating, publishing, selling, or
23 distributing" Superboy, based on the fact that Siegel was
24 the sole and exclusive owner.⁵ Defendants' argument also

25
26 ⁵ [Decl. Toberoff Exh. B, Pg. 5-6 COL # 25].

1 contradicts the fact that Siegel subsequently transferred
2 his exclusive interest in Superboy to National in the May
3 19, 1948 stipulated settlement. Had Superboy been nothing
4 more than a derivative work, Siegel would have owned no
5 interest in the Superboy property to transfer.

6
7 Having determined that Section 304(c) applies to this
8 dispute, this Court also finds that Plaintiffs have
9 established that no genuine issue of material fact exists
10 regarding the effectiveness of their termination of the
11 Superboy copyrights.

12
13 Pursuant to 17 U.S.C. 304(c) and 37 C.F.R. §
14 201.10(b)(1)(iv), Plaintiffs' termination notices list the
15 following pre-1978 grants of Superboy: (1) the May 19, 1948
16 Agreement (stipulated settlement); and (2) the December 23,
17 1975 Agreement (where relevant, though this agreement does
18 not mention Superboy). No post-1978 grants of rights
19 regarding Superboy exist.

20
21 Defendants argued that Plaintiffs failed to comply with
22 the termination regulations, because the termination notices
23 only list the May 19, 1948 stipulated settlement, but did
24 not list the May 21, 1948 "Final Consent Agreement."

25
26 This Court finds that no genuine issue exists that the

1 operative grant of "Superboy" by Jerome Siegel was the May
2 19, 1948 stipulated settlement and that the consent judgment
3 merely followed the parties' stipulation and was entered by
4 the Court two days later. Additionally, Regulation
5 201.10(b)(1)(iv) merely requires a "brief statement
6 reasonably identifying the grant to which the notice of
7 termination applies." In fact, Regulation 201.10(e)
8 provides that

9
10 harmless errors in a notice that do not materially
11 affect the adequacy of the information required to
12 serve the purposes of . . . section 304(c) . . .
13 shall not render the notice invalid.
14

15 Here, by listing the May 19, 1948 stipulated
16 settlement, the termination notices provide a brief
17 statement reasonably identifying the grant in question.
18 Even, if including the May 21, 1948 consent judgment would
19 have provided additional notice, its absence in no way
20 materially affected the adequacy of Plaintiffs' notice.
21

22 As Jerome Siegel's widow, Joanne Siegel owns 50% of her
23 husband's termination interest. 17 U.S.C. § 304(c)(2)(A).
24 As one of his two surviving children, Laura Siegel Larson
25 owns 25% of Siegel's termination interest. 17 U.S.C. §
26 304(c)(2)(A). Together Plaintiffs own more than one-half of

1 Siegel's termination interest required to effectively
2 terminate Siegel's grant pursuant to 17 U.S.C. §304(c)(1).
3

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4 Defendants argued that Plaintiffs' Superboy termination
5 notices were ineffective, because Joseph Shuster has a co-
6 ownership/joint works interest in Superboy not asserted in
7 the termination notices. Defendants argued that since
8 Shuster has a one-half interest in Superboy, Plaintiffs only
9 have Siegel's one-half interest, not the "more than one-
10 half" needed to terminate pursuant to Section 304(c). They
11 point to the fact that More Fun (Superboy's comic) was
12 published with the byline "Jerry Siegel and Joe Shuster."
13

14 But, while Shuster was the illustrator attached to
15 Superboy, the 1947 state court action determined that Siegel
16 was the sole originator and owner of Superboy and Siegel
17 alone possessed exclusive ownership rights. Ownership
18 rights, which he and not Shuster, subsequently transferred
19 in the stipulated settlement. No facts support a contrary
20 finding.

21
22 Finally, this Court finds that Plaintiffs timely and
23 properly recorded with the Copyright Office and served on
24 Defendants the notices of termination for the Superboy
25 copyrights as required by 17 U.S.C. § 304(c) and 37 C.F.R. §
26 201.10.

1 Therefore, this Court finds that Plaintiffs effectively
2 terminated Jerome Siegel's grants of the Superboy
3 copyrights, recapturing them on November 17, 2004.
4 To the extent that Defendants' Motion for Summary Judgment
5 makes a contrary request, this Court **DENIES** Defendants'
6 motion.

7
8 Also, as to Defendants, this Court **DENIES** Defendants'
9 request for a finding that the WB television show,
10 *Smallville*, does not infringe on Plaintiffs' recaptured
11 copyrights. Defendants' argument reaches a quick and broad
12 conclusion that Plaintiffs' copyrights in Superboy protect
13 virtually nothing more than the idea of a "youth with super
14 powers."

15
16 In order to establish copyright infringement,
17 Plaintiffs must first establish ownership and then must show
18 the two following factors: (1) the defendant had access to
19 the copyrighted material; and (2) the defendant's material
20 is substantially similar to the copyrighted material. Three
21 Boys Music Corp. v. Bolton, 212 F.3d 477, 481 (9th Cir.
22 2000).

23
24 Here, no genuine issue of material fact exists as to
25 Plaintiffs' ownership in the Superboy copyrights, nor is
26 there an issue that Defendants' had access to the Superboy

1 property. But, because substantial similarity is
2 customarily an extremely close question of fact, summary
3 judgment has traditionally been frowned upon in copyright
4 litigation. Hoehling v. Univ. City Studios, Inc., 618 F.2d
5 972, 977 (2d. Cir. 1980).

6
7 Here, the specific question as to whether the
8 television show *Smallville* infringes on Plaintiffs' Superboy
9 copyrights requires a detailed factual comparison of each
10 property's content characteristics, much of which are
11 disputed in Plaintiffs' and Defendants' papers. Plaintiffs
12 immediately start drawing comparisons between the storylines
13 of *Smallville* and the Superboy comic strip, including the
14 cast of characters' names, personas, roles in the storyline,
15 their independent storylines, the location, etc. Enough
16 facts are presented, where this Court, contrary to
17 Defendants' request, could find that the main character in
18 *Smallville* is in fact Superboy.⁶

19
20 Therefore, this Court in construing the submitted
21 evidence in the light most favorable to the non-moving
22 party, Plaintiffs, genuine issues of material fact exist as
23 to whether Defendants' television show *Smallville* is
24 infringing Plaintiffs' copyrights.

25
26 ⁶ In the Superboy comic strip a billboard on the side of a rural
country road announces, "Welcome to Smallville! Home of Superboy."

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Therefore, Defendants' Motion for Summary Judgment is DENIED.

This Court adopts Plaintiff's Findings of Fact and Conclusions of Law with modifications.

IT IS SO ORDERED.

RONALD S.W. LEW

RONALD S.W. LEW
United States District Judge

DATED: March 23, 2006

SCANNED

EXHIBIT B

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

RONALD J. LEHRMAN
DAVID WEINBERG
STEPHEN BIGGER
ROBERT L. BROWN
MARIE V. BRISCELL
THOMAS S. LEVY
DAVID W. BRULIN
EVAN WYON BRULIN
JACOB L. HOFFMAN
PETER J. SILVERMAN
LAWRENCE (L) APOLLON
BARBARA A. SOLOMON
LISA PERSON
MARK D. JOSEPHMAN
VABINE H. JARROLD
ANDREW G. FROST
GEORGE MANIOTOUVARIS
JACOB S. HURD
J. ALLISON STRICKLAND
JOHN P. MARCIFFA
NANCY A. SCHWAB

800 UNITED NATIONS PLAZA
AT FIRST AVENUE & 48TH STREET
NEW YORK, N. Y. 10017

TELEPHONE: (212) 613-6922
FACSIMILE: (212) 613-6901
E-MAIL: jweinberger@frosszelnick.com

MICHAEL I. DAVID
SPECIAL COUNSEL
JAMES H. SILBERSTEIN
GUY S. LEBAN
JOYCE M. FROST
PHILIP T. SHANNON
MICHELLE D. FROST
JACOB L. HOFFMAN
SPECIAL COUNSEL

ROBERT A. SCHWAB
TAMAR M. GOLDBERG
LYDIA T. GROSS
MICHAEL BRISCELL
EVAN WYON
CARLOS GONZALEZ
JACOB S. HURD
BOB DILLEN
JACOB S. WEINBERG
JACOB W. FROST
DAVID I. BRIDENBAUM
DAVID SCHWAB
MICHAEL A. ANTUNOPOULOS
TAMAR S. JAGARON
LAWRA POPP-GOLDBERG
NANCY A. SCHWAB
JAMES M. BALLEWATZ
NELLIE KARASIK
MICHAEL A. GOLDBERG
ANDREW G. FROST
JACOB S. HURD
MICHAEL T. J. WEINBERG
SPECIAL COUNSEL

August 9, 2005

BY FACSIMILE

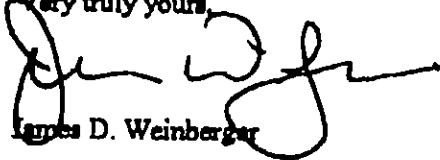
Marc Toberooff, Esq.
Law Offices of Marc Toberooff, P.C.
1999 Avenue of the Stars, Suite 1540
Los Angeles, California 90067

Re: *Stegal v. Warner Bros.*, Case Nos. 04-CV-8400, 04-CV-8776 DDP (ANx)
(C.D. Cal) (Our Ref. No. DCC USA TC-0425344)

Dear Marc:

Further to my August 2, 2005 letter, we are ready to make a supplemental production of DC's non-confidential documents, numbered DCC 00000001-00004102. Please let us know at your earliest convenience how you would like to arrange for copies to be made. If you like, we can use a local vendor (at your clients' cost, of course) and arrange for documents to be sent directly from there to your offices.

Also, I enclose a draft protective order for discussion. Upon agreement, we are ready to commence DC's rolling production of confidential documents.

Very truly yours,

James D. Weinberger

cc: Michael Bergman, Esq. (by facsimile)
David L. Burg, Esq. (by facsimile)
Patrick T. Perkins, Esq. (by email)
Roger L. Zissu, Esq.

EXHIBIT C

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

RONALD J. LEHRMAN
DAVID WEILB III
STEPHEN ZISSU
ROGER L. ZISSU
MARIE V. BRISQOLL
RICHARD Z. LEMV
DAVID W. ENRLION
RUBAN UPTON BOVELLASS
JANEY L. HOFFMAN
PETER J. SILVERMAN
LAWRENCE ELI APOLSON
BARBARA A. SOLOMON
MARIO AISTA
MARK S. ENGELMANN
NABINE H. JACOBSON
ANDREW H. FROSTBERG
CRAIG S. MOROS
J. ALLISON DYRICKLAND
JOHN P. MARGIOTTA
MARIA A. SCUNSIG
LYDIA T. COBENA
CARLOS BUCARELLA

866 UNITED NATIONS PLAZA
AT FIRST AVENUE & 48TH STREET
NEW YORK, N. Y. 10017

TELEPHONE: (212) 813-5900
FACSIMILE: (212) 813-5901
E-MAIL: iziz@frosszelnick.com

MICHAEL I. DAVIS
SPECIAL COUNSEL

JAMES B. SILVERSTEIN
JOYCE M. FERRARO
PHILIP T. SHANNON
MICHELLE P. POEMAN
ANGELA RIM
ROBERT A. BECKER
COUNSEL

TAMAR RIV. GEDINGER
MICHAEL CHIAPPETTA
EVAN SOURVITZ
HARVEY S. SIOGREN
EON HILDEN
JAMES B. WEINBERGER
DAVID J. GREENBAUM
DAVID DONAHUE
MELISSA A. ANTONESCHIA
HARVEY S. BARBARA
LAURA POPP-ROSENBERG
KARA A. DOYLE
JOHN M. GALLAGHER
MELISSA A. HERGENROTHER
JUSTIN DEASLER
CHARLES T. J. WEIRLL III
ALLISON J. SIBBY
MARILYN F. KELLY
CHRISTOPHER M. SINDLER
TODD MARTIN
AIMEE ALLEN
GARDLING S. BOENH

*ADMITTED IN NORTH CAROLINA

April 7, 2006

BY FEDERAL EXPRESS

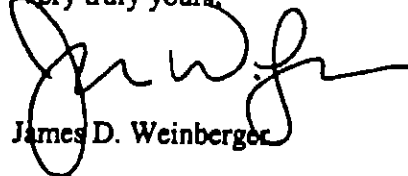
Marc Toberoff, Esq.
Law Offices of Marc Toberoff, P.C.
1999 Avenue of the Stars, Suite 1540
Los Angeles, California 90067

Re: *Superman Litigation*, Case Nos. 04-CV-8400, 04-CV-8776 RSWL (RZx)
(C.D. Cal) (Our Ref. No. DCC USA TC-0425344)

Dear Marc:

Enclosed please find DC Comics' privilege log. I understand that the Warner log and production will follow shortly. Please advise when we can get Plaintiffs' privilege log.

Very truly yours,



James D. Weinberger

Enclosure

cc: Michael Bergman, Esq. (by email, w/o encl.)
Anjani Mandavia, Esq. (by email, w/o encl.)
Adam Hagen, Esq. (by email, w/o encl.)
Patrick T. Perkins, Esq. (by email, w/o encl.)
Roger L. Zissu, Esq. (w/o encl.)

EXHIBIT D

WWBCGE

VIA FAX (310)246-3101
AND US MAIL

June 2, 2006

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

Adam Hagen
ahagen@wwlp.com
310.560.3366

Re: Siegel v. Warner Bros., Case Nos. 04-CV-8400,
04-CV-8776 DDP (ANX) (C.D. Cal.) (Our File No. 02231 0811)

Dear Marc:

Warner Bros. documents, numbered WB 000001 - WB 010248, are available for your inspection and copying. Please let us know what arrangements you would like to have made for inspection and copying.

Very truly yours,



Adam Hagen

AH:ac

cc: Wayne Smith
Roger Zissu
Patrick Perkins
Michael Bergman
James Weinberger

WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP
9665 WILSHIRE BLVD NINTH FLOOR, BEVERLY HILLS, CA 90212 T: 310.868.7888 F: 310.560.7191 WWW.WWLLP.COM
LAWYERS

321231_1.DOC

EXHIBIT E

WWBCGE

VIA FAX (w/o Encls) (310)246-3101
AND US MAIL

June 27, 2006

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

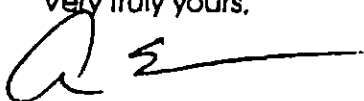
Adam Hagen
ahagen@wwllp.com
310.860.3366

Re: *Siegel v. Warner Bros.*
Case Nos. 04-CV-8400, 04-CV-8776 DDP (ANx) (C.D. Cal.)

Dear Marc:

Enclosed please find Warner Bros.'s privilege log.

Very truly yours,



Adam Hagen

AH:ac

Enclosure

EXHIBIT F

LAW OFFICES OF MARC TOBEROFF

A PROFESSIONAL CORPORATION

MARC TOBEROFF*
NICHOLAS C. WILLIAMSON
* ALSO ADMITTED IN NEW YORK

2049 CENTURY PARK EAST, SUITE 2720
LOS ANGELES, CALIFORNIA 90067

TELEPHONE
(310) 246-3333

FACSIMILE
(310) 246-3101

July 14, 2006

Via U.S. Mail & Facsimile (845) 265-2819

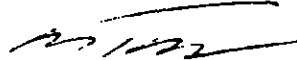
Patrick Perkins, Esq.
Perkins Law Office, PC
1711 Route 9D
Cold Spring, New York 10516

Re: Jean Shuster Peavy and Mark Peary

Dear Patrick:

Enclosed please find the following documents from Jean Shuster Peavy and Mark Peary numbered 1-8 responsive to Defendants' April 10, 2006 deposition subpoenas. We expressly reserve the right to supplement this production.

Very truly yours,



Marc Toberoff

cc: Michael Bergman, Esq.
James D. Weinberger, Esq.

EXHIBIT G

Marc Toberoff

From: Patrick Perkins [pperkins@ptplaw.com]
Sent: Wednesday, August 02, 2006 8:23 AM
To: 'Marc Toberoff'; 'Nick Williamson'
Cc: 'Roger Zissu'; 'James Weinberger'; 'Michael Bergman'; 'Anjani Mandavia'
Subject: Motion to Compel and for Contempt Filed in the District of New Mexico
Attachments: 8-1-06 Memo in support of motion to compel (00004266).PDF; 8-1-06 Motion to Compel as filed (00004265).PDF; _AVG certification_.txt

Dear Marc and Nick:

Attached hereto are defendants' Motion to Compel, For Contempt, and for Attorneys' Fees, and the Memorandum in support thereof filed yesterday in the U.S. District Court for the District of New Mexico. I apologize this was not provided to you yesterday as I had a miscommunication with Santa Fe counsel.

In light of the fact that the issue of your clients' documents is unresolved, the depositions of your clients currently scheduled for August 7 and 8 are postponed pending resolution of the document issue.

Regards,

Patrick T. Perkins
Perkins Law Office, PC
1711 Route 9D
Cold Spring, New York 10516
Tel: (845) 265-2820
Fax: (845) 265-2819
e-mail: pperkins@ptplaw.com

CONFIDENTIALITY NOTICE: The information in this electronic mail transmission is confidential, intended only for the named recipient(s), and may contain information that is privileged, attorney work product, or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender at (845) 265-2820 and delete this email message from your computer.

8/25/2006

EXHIBIT H

1 Marc Toberoff (CA State Bar No. 188547)
2 Nicholas C. Williamson (CA State Bar No. 231124)
3 LAW OFFICES OF MARC TOBEROFF, PLC
4 2049 Century Park East, Suite 2720
5 Los Angeles, CA 90067
6 Telephone: (310) 246-3333
7 Facsimile: (310) 246-3101

8 Attorneys for Plaintiffs and Counterclaim Defendants
9 Joanne Siegel and Laura Siegel Larson

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JOANNE SIEGEL, an individual; and
13 LAURA SIEGEL LARSON, an
14 individual,

15 Plaintiffs,

16 vs.

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

22 Defendants

23 DC COMICS,

24 Plaintiffs

25 vs.

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

Counterclaim Defendants

Civil Case No. 04-8776 RSWL (RZx)

**MARK WARREN PEARY
AND JEAN SHUSTER PEAVY'S
OBJECTIONS TO
TO DEFENDANTS' SUBPOENA**

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:
2 Mark Warren Peary and Jean Shuster Peavy (the "Shusters"), pursuant to
3 the provisions of Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure,
4 make the following objections to the subpoena duces tecum that was served on
5 them on April 12, 2006:

6 **Document Category No. 1:**

7 All documents Concerning Superman and/or Superboy.

8 **Response to Document Category No. 1:**

9 The Shusters object to this request on the grounds that it is vague and
10 ambiguous. The Shusters further object to this request on the grounds that it is
11 overbroad, burdensome and oppressive. The Shusters further object to this
12 request to the extent it seeks documents or communications protected by the
13 attorney/client privilege. Subject to and without waiving the foregoing
14 objections, the Shusters will produce all non-privileged documents they are able
15 to determine are responsive to this request.

16 **Document Category No. 2:**

17 All documents Concerning any negotiations by or with Defendants,
18 Plaintiffs, Dennis Larson, Michael Siegel, and/or the Shuster Representatives.

19 **Response to Document Category No. 2:**

20 The Shusters object to this request on the grounds that it is vague and
21 ambiguous, including without limitation, the phrase "any negotiations
22 Concerning Superman and/or Superboy." The Shusters further object to this
23 request on the grounds that it is overbroad, burdensome and oppressive. The
24 Shusters further object to this request to the extent it seeks documents or
25 communications protected by the attorney/client privilege. Subject to and
26 without waiving the foregoing objections, the Shusters will produce all non-
27 privileged documents they are able to determine are responsive to this request.

28

1 **Document Category No. 3:**

2 All documents Concerning any agreements with Plaintiffs, Dennis
3 Larson, Michael Siegel, and/or the Shuster Representatives Concerning
4 Superman and/or Superboy, including but not limited to, any agreements
5 Concerning any ownership interest in and/or revenue from Superman and/or
6 Superboy.

7 **Response to Document Category No. 3:**

8 The Shusters object to this request on the grounds that it is vague and
9 ambiguous, including without limitation, the phrase "any agreements
10 Concerning any ownership interest in and/or revenue from Superman and/or
11 Superboy." The Shusters further object to this request on the grounds that it is
12 overbroad, burdensome and oppressive. The Shusters further object to this
13 request to the extent it seeks documents or communications protected by the
14 attorney/client privilege. Subject to and without waiving the foregoing
15 objections, the Shusters will produce all non-privileged documents they are able
16 to determine are responsive to this request.

17 **Document Category No. 4:**

18 All documents Concerning any valuation of any current or potential
19 ownership interest in Superman and/or Superboy.

20 **Response to Document Category No. 4:**

21 The Shusters object to this request on the grounds that it is vague and
22 ambiguous, including without limitation, the phrase "any valuation of any
23 current or potential ownership interest." The Shusters further object to this
24 request on the grounds that it is overbroad, burdensome and oppressive. The
25 Shusters further object to this request to the extent it seeks documents or
26 communications protected by the attorney/client privilege. Subject to and
27 without waiving the foregoing objections, the Shusters will produce all non-
28 privileged documents they are able to determine are responsive to this request.

1 **Document Category No. 5:**

2 All documents evidencing any correspondence with any third person
3 Concerning Superman and/or Superboy.

4 **Response to Document Category No. 5:**

5 The Shusters object to this request on the grounds that it is vague and
6 ambiguous. The Shusters further object to this request on the grounds that it is
7 overbroad, burdensome and oppressive. The Shusters further object to this
8 request to the extent it seeks documents or communications protected by the
9 attorney/client privilege. Subject to and without waiving the foregoing
10 objections, the Shusters will produce all non-privileged documents they are able
11 to determine are responsive to this request.

12 **Document Category No. 6:**

13 All documents Concerning the letter of agreement dated August 1, 1992,
14 signed by Paul Levitz, Frank Shuster and Jean Shuster Peavy.

15 **Response to Document Category No. 6:**

16 The Shusters object to this request on the grounds that it is overbroad,
17 burdensome and oppressive. The Shusters further object to this request to the
18 extent it seeks documents or communications protected by the attorney/client
19 privilege. Subject to and without waiving the foregoing objections, the Shusters
20 will produce all non-privileged documents they are able to determine are
21 responsive to this request.

22

23 Dated: August 11, 2006

LAW OFFICES OF MARC TOBEROFF, PLC

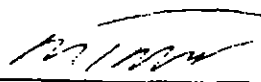
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28



Marc Toberoff
Attorneys for MARK WARREN PEARY and
JEAN SHUSTER PEAVY

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of eighteen
4 years and not a party to the within action; my business address is: 2049 Century Park East, Suite 2720,
Los Angeles, California 90067.

5 On August 11, 2006, I served the attached document described as **MARK WARREN**
6 **PEARY AND JEAN SHUSTER PEAVY'S OBJECTIONS TO DEFENDANTS' SUBPOENA** on
7 all interested parties in this action by placing ____ the original X a true copy thereof enclosed in
sealed envelope(s) addressed as follows:

8 Roger L. Zissu
9 James D. Weinberger
10 FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 United Nations Plaza
New York, New York 10017

11 Patrick T. Perkins
12 PERKINS LAW OFFICE, P.C.
1711 Route 9D
Cold Spring, NY 10516

13 Michael Bergman
14 WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP
9665 Wilshire Boulevard, Ninth Floor
15 Beverly Hills, CA 90212

16 :BY FACSIMILE:

17 As follows: I caused the transmission of the above named document to the fax number set forth
18 above, or on the attached service list.

19 :BY MAIL:

20 As follows: I am "readily familiar" with the firm's practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on
that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of
22 business. I am aware that on motion of the party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit for mailing in
affidavit.

23 :(STATE) - I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct.

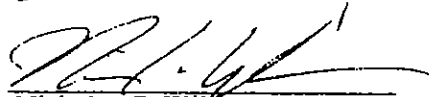
25 :(FEDERAL) - I declare that I am employed in the office of a member of the bar of this court at
26 whose direction the service was made.

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I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on August 11, 2006, in Los Angeles, California.


Nicholas C. Williamson

PRIVILEGE LOG

Log #	Date of Document	Identity of Recipient(s)	Identity of Autho(s)r	Document Type	Privilege Claim	Present Location
1	11/23/2001	Mark Peary & Jean Peavy	Atty Marc Toberoff	Letter	Atty/Client	Plaintiffs' Counsel
2	6/13/2003	Atty John Pettker	Atty Marc Toberoff	Letter	Atty/Client	Plaintiffs' Counsel
3	7/8/2003	Atty Marc Toberoff	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
4	8/25/2003	Mark Peary	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
5	9/15/2003	Mark Peary	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
6	10/10/2003	Mark Peary & Jean Peavy	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
7	10/27/2003	Mark Peary	Atty Marc Toberoff	Letter	Atty/Client	Plaintiffs' Counsel
8	8/25/2005	Mark Peary	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
9	4/11/2006	Atty Marc Toberoff	Jean Peavy	Letter	Atty/Client	Plaintiffs' Counsel
10	6/9/2006	Atty Marc Toberoff	Mark Peary	E-mail	Atty/Client	Plaintiffs' Counsel

11 6/9/2006 Atty Marc Toberoff Mark Peary E-mail Atty/Client Plaintiffs' Counsel

12 7/11/2006 Atty Marc Toberoff Mark Peary Letter Atty/Client Plaintiffs' Counsel

13 00/00/00 Atty Marc Toberoff Mark Peary Letter Atty/Client Plaintiffs' Counsel

EXHIBIT I

LAW OFFICES OF MARC TOBEROFF

A PROFESSIONAL CORPORATION

MARC TOBEROFF*
NICHOLAS C. WILLIAMSON
* ALSO ADMITTED IN NEW YORK

2049 CENTURY PARK EAST, SUITE 2720
LOS ANGELES, CALIFORNIA 90067

TELEPHONE
(310) 246-3333

FACSIMILE
(310) 246-3101

August 14, 2006

Via Facsimile (845) 265-2819

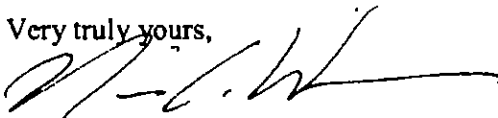
Patrick Perkins, Esq.
Perkins Law Office, P.C.
1711 Route 9D
Cold Spring, New York 10516

Re: Warren Peary and Jean Peavy Document Production

Dear Patrick:

Enclosed please find an additional document produced by Warren Peary and Jean Peavy bates numbered 134- 137.

Very truly yours,



Nicholas C. Williamson

EXHIBIT J

1 Marc Toberoff (CA State Bar No. 188547)
2 Nicholas C. Williamson (CA State Bar No. 231124)
3 LAW OFFICES OF MARC TOBEROFF, PLC
4 2049 Century Park East, Suite 2720
5 Los Angeles, CA 90067
6 Telephone: (310) 246-3333
7 Facsimile: (310) 246-3101

8 Attorneys for Plaintiffs and Counterclaim Defendants
9 Joanne Siegel and Laura Siegel Larson

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JOANNE SIEGEL, an individual; and
13 LAURA SIEGEL LARSON, an
14 individual,

15 Plaintiffs,

16 vs.

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

22 Defendants

23 DC COMICS,

24 Plaintiffs

25 vs.

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

Counterclaim Defendants

Civil Case No. 04-8776 RSWL (RZx)

**MARK WARREN PEARY
AND JEAN SHUSTER PEAVY'S
AMENDED OBJECTIONS TO
DEFENDANTS' SUBPOENA**

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 Mark Warren Peary and Jean Shuster Peavy (the "Shusters"), pursuant to
3 the provisions of Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure,
4 make the following amended objections to the subpoena duces tecum that was
5 served on them on April 12, 2006:

6 **Document Category No. 1:**

7 All documents Concerning Superman and/or Superboy.

8 **Response to Document Category No. 1:**

9 The Shusters object to this request on the grounds that it is vague and
10 ambiguous. The Shusters further object to this request to the extent it seeks
11 documents or communications protected by the attorney/client privilege.

12 Subject to and without waiving the foregoing objections, the Shusters will
13 produce all non-privileged documents responsive to this request.

14 **Document Category No. 2:**

15 All documents Concerning any negotiations by or with Defendants,
16 Plaintiffs, Dennis Larson, Michael Siegel, and/or the Shuster Representatives.

17 **Response to Document Category No. 2:**

18 The Shusters object to this request on the grounds that it is vague and
19 ambiguous, including without limitation, the phrase "any negotiations
20 Concerning Superman and/or Superboy." The Shusters further object to this
21 request to the extent it seeks documents or communications protected by the
22 attorney/client privilege. Subject to and without waiving the foregoing
23 objections, the Shusters will produce all non-privileged documents responsive
24 to this request.

25 **Document Category No. 3:**

26 All documents Concerning any agreements with Plaintiffs, Dennis
27 Larson, Michael Siegel, and/or the Shuster Representatives Concerning
28 Superman and/or Superboy, including but not limited to, any agreements

1 Concerning any ownership interest in and/or revenue from Superman and/or
2 Superboy.

3 **Response to Document Category No. 3:**

4 The Shusters object to this request on the grounds that it is vague and
5 ambiguous, including without limitation, the phrase "any agreements
6 Concerning any ownership interest in and/or revenue from Superman and/or
7 Superboy." The Shusters further object to this request to the extent it seeks
8 documents or communications protected by the attorney/client privilege.
9 Subject to and without waiving the foregoing objections, the Shusters will
10 produce all non-privileged documents responsive to this request.

11 **Document Category No. 4:**

12 All documents Concerning any valuation of any current or potential
13 ownership interest in Superman and/or Superboy.

14 **Response to Document Category No. 4:**

15 The Shusters object to this request on the grounds that it is vague and
16 ambiguous, including without limitation, the phrase "any valuation of any
17 current or potential ownership interest." The Shusters further object to this
18 request to the extent it seeks documents or communications protected by the
19 attorney/client privilege. Subject to and without waiving the foregoing
20 objections, the Shusters will produce all non-privileged documents responsive
21 to this request.

22 **Document Category No. 5:**

23 All documents evidencing any correspondence with any third person
24 Concerning Superman and/or Superboy.

25 **Response to Document Category No. 5:**

26 The Shusters object to this request on the grounds that it is vague and
27 ambiguous. The Shusters further object to this request to the extent it seeks
28 documents or communications protected by the attorney/client privilege.

1 Subject to and without waiving the foregoing objections, the Shusters will
2 produce all non-privileged documents responsive to this request.

3 **Document Category No. 6:**

4 All documents Concerning the letter of agreement dated August 1, 1992,
5 signed by Paul Levitz, Frank Shuster and Jean Shuster Peavy.

6 **Response to Document Category No. 6:**

7 The Shusters further object to this request to the extent it seeks
8 documents or communications protected by the attorney/client privilege.

9 Subject to and without waiving the foregoing objections, the Shusters will
10 produce all non-privileged documents responsive to this request.

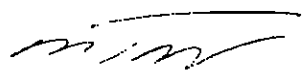
11

12 Dated: August 16, 2006

LAW OFFICES OF MARC TOBEROFF, PLC

13

14



15

Marc Toberoff

16

Attorneys for MARK WARREN PEARY and
JEAN SHUSTER PEAVY

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of eighteen
4 years and not a party to the within action; my business address is: 2049 Century Park East, Suite 2720,
Los Angeles, California 90067.

5 On August 16, 2006, I served the attached document described as **MARK WARREN**
6 **PEARY AND JEAN SHUSTER PEAVY'S AMENDED OBJECTIONS TO DEFENDANTS'**
7 **SUBPOENA** on all interested parties in this action by placing ____ the original X a true copy
thereof enclosed in sealed envelope(s) addressed as follows:

8 James D. Weinberger
9 FROSS ZELNICK LEHRMAN & ZISSU, P.C.
10 866 United Nations Plaza
11 New York, NY 10017
12 Facsimile No. 212-813-5901

13 Patrick T. Perkins
14 PERKINS LAW OFFICE, P.C.
15 1711 Route 9D
16 Cold Spring, NY 10516
17 Facsimile No. 845-265-2819

18 Michael Bergman
19 WEISSMAN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP
20 9665 Wilshire Boulevard, Ninth Floor
21 Beverly Hills, CA 90212
22 Facsimile No. 310-550-7191

23 :BY MAIL:

24 As follows: I am "readily familiar" with the firm's practice of collection and processing
25 correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on
26 that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of
27 business. I am aware that on motion of the party served, service is presumed invalid if postal
28 cancellation date or postage meter date is more than one day after date of deposit for mailing in
affidavit.

:(STATE) - I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

:(FEDERAL) - I declare that I am employed in the office of a member of the bar of this court
at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on August 16, 2006, in Los Angeles, California.



Alexander M. Merino

EXHIBIT K

DC COMICS INC.
1325 Avenue of the Americas
New York, New York 10019
(212) 636-5555
FAX (212) 636-5401



Paul Levitz, Executive Vice President & Publisher

Dated as of August 1, 1992

Mr. Frank Shuster
98-120 Queens Blvd., Apt. 4K
Rego Park, NY 11374

Ms. Jean Shuster Peavy
316 Horton Lane, NW
Albuquerque, NM 87114

Dear Mr. Shuster and Ms. Peavy:

This is to confirm our agreement to pay you, collectively, a total of \$25,000 a year, payable to Jean Shuster Peavy, commencing as of August 1, 1992, for as long as either one of you is alive. Such amounts shall be payable in accordance with Warner Communication Inc.'s customary payroll practices and shall be subject to all applicable withholding taxes. If Jean Shuster Peavy shall predecease Frank Shuster, then the foregoing payments shall be made to Frank Shuster for as long as he shall live.

We ask you to confirm by your signatures below that this agreement fully settles all claims to any payments or other rights or remedies which you may have under any other agreement or otherwise, whether now or hereafter existing regarding any copyrights, trademarks, or other property right in any and all work created in whole or in part by your brother, Joseph Shuster, or any works based thereon. In any event, you now grant to us any such rights and release us, our licensees and all others acting with our permission, and covenant not to assert any claim of right, by suit or otherwise, with respect to the above, now and forever.

If, despite the terms of this agreement, either of you assert any such claim of right, for any reason, you agree to refund to us, upon the making of any such assertion, all amounts previously paid to you hereunder, and we will have no obligation to make any further payments under this agreement. We also reserve all of our other rights, remedies and defenses in such an event.

If after full consideration of the foregoing, you accept and agree to all of the above, please so indicate by signing below where indicated.


Very truly yours,

DC Comics

By:



Paul Levitz

ACCEPTED AND AGREED TO:


Frank Shuster

Dated: 10/2/92

10/2/92


Jean Shuster Peavy

Dated: 10/2/92

10/2/92



CERTIFICATE OF SERVICE

I certify that on the 25 day of August, 2006, true and correct copies of

1. MARK PEARY AND JEAN ADELE PEAVY'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA DUCES TECUM, FOR CONTEMPT, AND FOR ATTORNEYS FEES

2. DECLARATION OF MARC TOBEROFF, ESQ. IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA DUCES TECUM, FOR CONTEMPT, AND FOR ATTORNEYS FEES

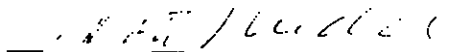
were served by regular US Mail postage prepaid to the following individuals:

Benjamin Allison
SUTIN THAYER & BROWNE, P.C.
Post Office Box 2187
Santa Fe, NM 87504

Patrick T. Perkins
PERKINS LAW OFFICE, P.C.
1711 Route 9D
Cold Spring, NY 10516

Counsel for Movants

JAY GOODMAN, ATTORNEY AT LAW, P.C.

BY: 
D. Scott Riedel, Esq.